[redacted]

SUPREME COURT OF THE [redacted]

[redacted]

No. [redacted]

[redacted]

TIDAL OIL COMPANY, [redacted]
PLAINTIFF IN ERROR,

vs.

[redacted]

IN ERROR TO THE [redacted]

[redacted]

[redacted]

[redacted]

(29,314)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 764.

TIDAL OIL COMPANY AND ELEANOR ARNOLD, PLAINTIFFS IN ERROR,

vs.

J. P. FLANAGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 23, 1923.

a

RETURN TO WRIT.

In obedience to the commands of the within Writ of error, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings requested in precipe for record filed herein, in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name, and affix the seal of said Supreme Court of Oklahoma, at Oklahoma City, Oklahoma, this 19th day of December, 1922. [Seal of the Supreme Court, State of Oklahoma.] William M. Franklin, Clerk Supreme Court of Oklahoma, by Jessie Pardoe, Deputy.

1 In the Supreme Court of the State of Oklahoma.

No. 11209.

TIDAL OIL COMPANY, a Corporation, and ELEANOR ARNOLD, Plaintiffs in Error,

vs.

J. P. FLANAGAN, Defendant in Error.

PETITION IN ERROR.

[Filed Feb. 18, 1920.]

The said Tidal Oil Company, a corporation, and Eleanor Arnold, complain of said defendant in error, J. P. Flanagan, for that on September 30, 1919, said J. P. Flanagan, in a certain suit pending in the District Court of Creek County, wherein the defendant in error was plaintiff and said Tidal Oil Company and Eleanor Arnold were defendants, recovered a judgment by the consideration of said court, against the said Tidal Oil Company and the said Eleanor Arnold, in said suit, and by which said judgment said J. P. Flanagan was adjudged and decreed to be the sole owner, in fee simple, of the lands involved in said suit, together with the mineral rights therein, and all equipment and property thereon, for the operation of said land for oil and gas, and to be entitled to the immediate possession thereof, and by which judgment and decree certain oil and gas leases under which said Tidal Oil Company was developing and operating said lands for oil and gas and paying the royalties prescribed therein to defendant in error and the said Eleanor Arnold, were vacated and set aside. The original cas made, duly certified and attested, is hereto attached, marked "Exhibit A" and made a part of this petition in error.

2 And the said Tidal Oil Company and Eleanor Arnold allege that there is error in the said record and proceedings in this, to wit:

I.

The defendant in error failed to prove a cause of action against the plaintiff in error, and the court erred in overruling the demurrers of each of said plaintiffs in error to the evidence introduced by said defendant in error, and to which said plaintiffs in error duly excepted.

II.

The court in vacating, annulling and setting aside the deed from Robert Marshall to Eleanor Arnold, W. W. Hyams and S. C. Lawson, dated October 25, 1909; the oil and gas lease executed May 31, 1910, to Orient Oil Company by Eleanor Arnold, W. W. Hyams and S. C. Lawson; the oil and gas lease executed May 31, 1910, to Arkansas Oil Company by Eleanor Arnold, W. W. Hyams and S. C. Lawson; the judgment rendered by the District Court of Creek County May 16, 1910, in case No. 1319, entitled Robert Marshall, a minor, by R. B. Thompson, his next friend, and B. B. Burnett, Guardian of said Robert Marshall, plaintiffs, vs. Eleanor Arnold, W. W. Hyams and S. C. Lawson; the agreement entered into June 30, 1913, between Eleanor Arnold and James Harris, guardian of Robert Marshall; the order of the County Court of Creek County in case No. 854 entitled In the Matter of the Guardianship of Robert Marshall, a minor, James Harris, guardian, made and entered July 5, 1913; the assignment executed by Orient Oil & Gas Company assigning and transferring its said oil and gas lease to Tidal Oil Company; the assignment dated August 1, 1915, by Arkansas Oil Company, assigning its said lease to Tidal Oil Company; the agreement dated August
3 29, 1915, entered into between Vance Likely, guardian of Robert Marshall, with Tidal Oil Company, ratifying and confirming the lease of Tidal Oil Company; and the order of the County Court of Creek County, made and entered on the 24th day of August, 1915, in the matter of the guardianship of Robert Marshall, a minor; neither of which judgments, orders or instruments were attacked by the pleadings, and the judgment herein vacating, annulling and setting aside said judgments, orders and instruments was not within the issues.

III.

The court erred in permitting the defendant in error, over the objection of the plaintiffs in error, to prove certain conversations with the officers of Tidal Oil Company, disclosed at pages 226 and 227 of the case-made, and to introduce in evidence the pleadings in said case No. 1319 in the District Court of Creek County, Oklahoma, as not within the issues.

IV.

The judgment and decree of the court is contrary to law.

V.

The judgment and decree of the court is not based on the issues joined between the parties.

VI.

The judgment and decree of the court, by divesting the Tidal Oil Company of its rights and title acquired under the judgment of the District Court of Creek County and the judgments and orders of the County Court of Creek County, each having jurisdiction in the premises, amounted to, and the enforcement thereof constitutes, a taking of property without due process of law, and in violation of the Constitution of the United States and of the State of Oklahoma.

4

VII.

The judgment and decree of the court is contrary to the evidence.

VIII.

The court erred in overruling the motions of Tidal Oil Company for a new trial, and erred in overruling the motions of Eleanor Arnold for a new trial.

IX.

The court erred in holding and deciding that the said J. P. Flanagan could lawfully maintain his action under the evidence, and was not estopped by his actions and conduct in the premises.

X.

The court erred in holding and deciding that the conduct of the defendant in error in accepting his one-fourth of the royalties prescribed in the leases under which Tidal Oil Company was operating the land for oil and gas, with knowledge that the remaining three-fourths was being paid to Eleanor Arnold, and also with notice of all the facts relative to the title and possession of said Tidal Oil Company, and with actual knowledge that the Tidal Oil Company was operating the lands for oil and gas under said leases, did not estop him from asserting the invalidity of such leases, and did not estop him from asserting that the said Tidal Oil Company was a trespasser on said lands, as alleged by him, and did not amount to a waiver of the alleged tort, and of his right to assail such leases, even if the same were invalid, upon the grounds claimed and asserted by said defendant in error.

5

XI.

The court erred in confirming the report of the referee, and in deciding and holding that, even if the leases of Tidal Oil Company

were invalid, said Tidal Oil Company was a willful trespasser and not entitled to be reimbursed for the cost and expense of producing oil and gas from the lands in controversy, and erred in holding and deciding that the measure of the plaintiff's damages was the value of the oil and gas after segregation from the land, rather than the value thereof in place.

XII.

The judgment and decree of the court, with respect to the lease equipment, is indefinite and uncertain, and not enforcible in that, and so far as, it decres that the plaintiff is entitled to have delivered to him "all equipment not properly a part of the fee," and the court erred in holding that the defendant in error, even if the owner of the land and the wells thereon, was entitled to have the equipment and property of said leases belonging to said Tidal Oil Company, without compensation, and in so holding and deciding, the judgment and decree of the court, and the enforcement thereof, amounts to an unlawful taking of the property of said Tidal Oil Company without due process of law.

XIII.

The judgment against the plaintiff in error, Tidal Oil Company, for one hundred eight thousand one hundred forty and 91/100 dollars ($108,140.91) and the judgment against the plaintiff in error, Eleanor Arnold, in the sum of ten thousand one hundred thirty-five and 20/100 dollars ($10,135.20), even if justified by law, is excessive and contrary to and against the evidence.

6 Wherefore, The Plaintiffs in error pray that said judgment so rendered may be reversed, set aside and held for naught, and that the plaintiffs in error be restored to all rights that they, or either of them, have lost by the rendition of such judgment, and for such other relief as to the court may seem just. West, Sherman, Davidson & Moore, W. C. Franklin, Biddison & Campbell, Attorneys for plaintiffs in error.

7 [Endorsement omitted.]

8 [Title omitted.]

PETITION.

(Filed Feb. 17, 1917.)

First Paragraph.

The plaintiff for his first cause of action against the defendants, alleges and states:

That one, Robert Marshall, was a citizen of the Creek Tribe or Nation of Indians, duly enrolled as a Creek Freedman opposite Roll

No. 5449, and that as such citizen of said Creek Tribe or Nation of Indians, there was allotted to the said Robert Marshall as his distributive share of the lands of said Creek Nation, the following described lands situate in Creek County, Oklahoma, to wit:

The West one-half of the Southwest Quarter (W. ½ S. W. ¼) of Section Twenty-nine (29), and the East one-half of the Southeast Quarter (E. ½ S. E. ¼) of Section Thirty (30), all in Township Eighteen (18) North, Range Twelve (12) East.

That the two patents or allotment deeds for said lands were duly executed by the Principal Chief of said Creek Nation, under
9 the approval of the Department of the Interior of the United States, and delivered to the said Robert Marshall, bearing date of August 30, 1904, and that said patents or allotment deeds, were on the 4th day of November, A. D. 1904, filed for record with the Dawes Commission at Muskogee, Oklahoma, and recorded therein on that date—one in Book 24, at page 276, and one in Book X at page 274, of the records of said Dawes Commission. Copies of which said patents or allotment deeds are hereto attached marked Exhibits "A" and "B" and made a part of this petition the same as if set out at length herein. Plaintiff further states that thereafterwards, for value, the said Robert Marshall conveyed the fee simple title in and to said lands to this plaintiff, by the following described instruments of conveyances, to wit:

1. A deed dated January 22, 1916, and filed for record in the office of the County Clerk within and for Creek County, Oklahoma, on the 22nd day of January, A. D. 1916, and duly recorded in Book 104, at page 404 thereof. A copy of which said deed is attached hereto, marked Exhibit "C" and made a part hereof, the same as if set out at length herein.

2. A deed dated October 13, 1916, and filed for record in the office of the County Clerk within and for Creek County, Oklahoma, on the 13th day of October, 1916, and recorded in Book 125, at page 133 thereof. A copy of which said deed is attached hereto, marked Exhibit "D" and made a part hereof, the same as if set out at length herein.

Plaintiff further states that under and by virtue of said conveyances from the said Robert Marshall to this said plaintiff, as aforesaid, the plaintiff became, and at all times since the execution and delivery of said deeds, has been the owner in fee simple of the lands hereinabove described, and that said plaintiff is now and has, at all times since the said 13th day of October, A. D. 1916, been in the open and notorious possession of the lands above described,
10 as the fee simple owner thereof; that said defendants, and each of them, claim and assert some right, title, estate or interest in and to said lands adverse to this plaintiff, the exact nature, character and extent of which are to said plaintiff unknown, but plaintiff alleges and states that said adverse claims of said defendants in and to said lands are inferior, junior and subject to the

right, claim and ownership of said plaintiff therein, and that said claims of said defendants, and each of them, in and to said premises are null and void, and of no validity in truth and in fact, but that such claims constitute a cloud upon the title of said plaintiff in and to said lands.

Second Paragraph.

The plaintiff for his second cause of action against the defendants, alleges and states:

He hereby adopts and reaffirms all of the allegations in his said first cause of action as hereinabove set out, and by reference makes the same a part and parcel of this his second cause of action, the same as if fully and completely herein set forth and repeated, And the plaintiff further alleges that he is the owner in fee simple of the lands hereinabove described and from *the since* the said 13th day of October, A. D. 1916, said plaintiff has been, and is now the owner of the exclusive right to operate, drill and develop said lands for petroleum oil and gas with the right to produce and save from said premises the said petroleum oil and natural gas so found in the oil and gas bearing sands underlying the surface thereof; but that the said defendants from and since said 13th day of October, 1916, with full knowledge of the rights and demands of said plaintiff, and against the will, consent and wish of said plaintiff,
11 and in utter disregard of his rights and ownership in and to said lands and said minerals, have been and now are forcebly, tortuously, wilfully and unlawfully from day to day, and from time to time, trespassing and continuing to trespass into and upon said lands, and to enter into and upon the same, without right, warrant or authority, for the purpose of drilling thereon for oil and gas, and for the purpose of extracting and removing the oil and gas found in, under and upon said lands, in the course of which said operations said defendants, and each of them, have extracted, removed and carried away from said premises, and converted to their own use, large quantities of petroleum oil and gas, to the great and continuing damage of this plaintiff; that said plaintiff is unable to state the exact amount of petroleum oil and gas so taken and converted by defendants as aforesaid, but plaintiff states that according to his best knowledge, said defendants have so wilfully and wrongfully converted to their own use during said time, at least 6,000 barrels of oil, of a value in excess of $12,000.00, and that said defendants have so wilfully and wrongfully converted to their own use natural gas of a value in excess of $3,000.00. Plaintiff alleges that said defendants threaten and intend and declare that they will so continue to enter into and upon the property of plaintiff as aforesaid, against his wish and consent, for the purpose of continuing further drilling operations thereon, and for the purpose of unlawfully producing oil and gas from the lands of said plaintiff as aforesaid, and to continue to extract and remove the same from said lands, and to convert the same to their own use as aforesaid, and plaintiff alleges and states that unless defendants be restrained and enjoined by order of this

Honorable Court, that they will so continue to trespass upon
12 said lands and to extract and remove the oil and gas therefrom, and to convert the same to their own use, to the great, irreparable and continuing damage and injury of said plaintiff. By reason of which the plaintiff's freehold estate in and to said lands will be permanently injured and greatly decreased in value, and plaintiff will be forced to a great multiplicity of suits in order to recover the value of such petroleum oil and gas unlawfully converted by defendants, and which will be converted on the part of defendants, and that plaintiff will have no way, and has now no way of determining the exact amount of oil and gas the defendants have so removed, and will continue to remove from the lands of the plaintiff in the manner as aforesaid.

Wherefore, premises considered, The plaintiff prays judgment of this Honorable Court as follows, to wit:

That the said defendants, and each of them, be required to set up and show the nature and character of their said claims in and to said lands and said property, if any, and that whatsoever claims of title, estate or interest said defendants may have, if any, in and to said premises, be by this Court adjudged and decreed null and void, and of no force and effect, as against this plaintiff; that said plaintiff's title in and to said lands and property—and all equipment thereon, be declared valid and perfect, and that the same be quieted as against said defendants, and each of them, and as against any and all claims, demands or assertions of right, title or interest in and to said lands, made or claimed by said defendants, or either of them, or by any and all persons claiming by, through or under them; that said defendants be perpetually barred and enjoined from setting up or asserting any title, claim or interest in and to said premises, or any part thereof, adverse to this plaintiff; that said defendants, and
13 each of them, be required to disclose what amount of oil and gas they have extracted and removed from said premises and converted to their own use from the lands of plaintiff, from and since the 13th day of October, 1916, and that said plaintiff be given judgment for the said sum of $15,000 and for such other sum as will be equal to the value of all the oil and gas so taken from said lands by said defendants from and since said date, at the highest market value thereof, up to and including the day of the trial of this cause; that said defendants, and each of them, be forever enjoined and restrained from further entering into and upon said lands for the purpose of extracting and removing the oil and gas therefrom, or for any other purpose, and from attempting to operate said lands for oil and gas, and from in any manner, whatsoever, interfering with or disturbing the plaintiff in his title and possession in and to said premises, and every part thereof; and that said plaintiff have and recover the costs herein, and for such other and further relief, both special and general, which to the Court may seem proper and just. Edw. H. Chandler, Farrar L. McCain, Geo. T. Brown, Attorneys for Plaintiff.

14 **ALLOTMENT DEED.**

The Muskogee (Creek) Nation to Robert Marshall.

Allottee No. 5449. Creek Freedman Roll. Date August 30th, 1904.

To all whom these Presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats. 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said Tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forth acres of land as a homestead for which he shall have a separate deed, and

Whereas, the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Robert Marshall, a citizen of said tribe, as an allotment, exclusive of a forty acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation by virtue of the power and authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Robert Marshall, all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described lands, viz:

The Northwest Quarter of the Southwest Quarter of Section 28, and the East half of the Southeast Quarter of Section 30 Township 18 North and Range 12 East, of the Indian Base and
15 Meridian, in Indian Territory, containing 120 acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress relating to appraisement and valuation, and to the provisions of the Act of Congress approved June 30, 1902.

In witness whereof, I, the Principal Chief of the Muskogee (Creek) nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 30th day of August, A. D. 1904. P. Porter, Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.

Approved October 26th, 1904. Thos. Ryan, Acting Secretary. [Seal.]

Delivered —— —, 190-. P. Porter, P. C. Filed for record on the 4th day of November, 1904, at 11 o'clock A. M. and recorded in Book 24 Page 276 Record Dawes Commission. Signed, Commission to the Five Civilized Tribes. Tams Bixby, Chairman.

Exhibit "A."

16

HOMESTEAD DEED.

The Muskogee (Creek) Nation to Robert Marshall.

Allottee No. 5449. Creek Freedman Roll. Date August 30th, 1904.

To all whom these Presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats. 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said Tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It has provided by said Act of Congress that each citizen shall select or have selected for him, a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Robert Marshall, a citizen of said tribe, as a forty acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation by virtue of the power and authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Robert Marshall, all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz. The Southwest Quarter of the Southwest Quarter of Section 29 Township 18 North and Range 12 East, of the Indian Base and Meridian, in Indian Territory, containing 40 acres, more or less, as the case may be, according to the United States survey thereof, subject, however to all provisions
17 of said Act of Congress relating to appraisement and valuation, and to the provisions of the Act of Congress approved June 30, 1902.

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 30th day of August, A. D. 1904. P. Potter, Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.

Approved October 26th, 1904. [Seal.] Thos. Ryan, Acting Secretary.

Delivered —— —, 190-. P. Porter, P. C. Filed for record on the 4th day of November, 1904, at 11 o'clock A. M. and recorded in Book X Page 274. Record Dawes Commission. Signed, Commission to the Five Civilized Tribes. Tames Bixby, Chairman.

Exhibit "B."

14 **ALLOTMENT DEED.**

The Muskogee (Creek) Nation to Robert Marshall.

Allottee No. 5449. Creek Freedman Roll. Date August 30th, 1904.

To all whom these Presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats. 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said Tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forth acres of land as a homestead for which he shall have a separate deed, and

Whereas, the said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Robert Marshall, a citizen of said tribe, as an allotment, exclusive of a forty acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation by virtue of the power and authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Robert Marshall, all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described lands, viz:

The Northwest Quarter of the Southwest Quarter of Section 28, and the East half of the Southeast Quarter of Section 30 Township
18 North and Range 12 East, of the Indian Base and
15 Meridian, in Indian Territory, containing 120 acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress relating to appraisement and valuation, and to the provisions of the Act of Congress approved June 30, 1902.

In witness whereof, I, the Principal Chief of the Muskogee (Creek) nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 30th day of August, A. D. 1904. P. Porter, Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.

Approved October 26th, 1904. Thos. Ryan, Acting Secretary. [Seal.]

Delivered —— —, 190-. P. Porter, P. C. Filed for record on the 4th day of November, 1904, at 11 o'clock A. M. and recorded in Book 24 Page 276 Record Dawes Commission. Signed, Commission to the Five Civilized Tribes. Tams Bixby, Chairman.

Exhibit "A."

16 **HOMESTEAD DEED.**

The Muskogee (Creek) Nation to Robert Marshall.

Allottee No. 5449. Creek Freedman Roll. Date August 30th, 1904.

To all whom these Presents shall come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats. 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said Tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It has provided by said Act of Congress that each citizen shall select or have selected for him, a homestead for which he shall have a separate deed, and

Whereas, The said Commission to the Five Civilized Tribes has certified that the land hereinafter described has been selected by or on behalf of Robert Marshall, a citizen of said tribe, as a forty acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation by virtue of the power and authority vested in me by the aforesaid Act of Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Robert Marshall, all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz. The Southwest Quarter of the Southwest Quarter of Section 29 Township 18 North and Range 12 East, of the Indian Base and Meridian, in Indian Territory, containing 40 acres, more or less, as the case may be, according to the United States survey thereof, subject, however to all provisions
17 of said Act of Congress relating to appraisement and valuation, and to the provisions of the Act of Congress approved June 30, 1902.

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 30th day of August, A. D. 1904. P. Potter, Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior.

Approved October 26th, 1904. [Seal.] Thos. Ryan, Acting Secretary.

Delivered —— —, 190-. P. Porter, P. C. Filed for record on the 4th day of November, 1904, at 11 o'clock A. M. and recorded in Book X Page 274. Record Dawes Commission. Signed, Commission to the Five Civilized Tribes. Tames Bixby, Chairman.

Exhibit "B."

18 **GENERAL WARRANTY DEED.**

This indenture, Made this 22nd day of January, A. D. 1916, between Robert Marshall, of Creek County, in the State of Oklahoma, of the first part, and J. P. Flanagan, the second part,

Witnesseth, That in consideration of the sum of Fifteen Hundred and no/100 Dollars, the receipt whereof is hereby acknowledged, said party of the first part does, by these presents, grant, bargain, sell and convey unto said party of the second part, his heirs and assigns, all of the following described real estate, stiuate in the County of Creek, State of Oklahoma, to wit:

The West Half of the Southwest Quarter of Section Twenty-nine (29), and East Half of the Southeast Quarter of Section Thirty (30), all in Township Eighteen (18) North, Range Twelve (12) East.

To have and to hold the same, together with all and singular the tenements, heriditaments and appurtenances, thereto belonging, or in any wise appurtaining forever.

And said Robert Marshall, his heirs, executors or administrators do hereby covenant, promise and agree to and with said party of the second part, at the delivery of these presents, that he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear and discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances, of whatever nature and kind, except — and that he will warrant and forever defend the same unto the said party of the second part, his heirs and assigns, against said party of the first part, his heirs or assigns, and all and every

19 person or persons whomsoever, claiming or to claim the same.

In witness whereof, The said party of the first part has hereunto set his hand the day and year first above written. Robert Marshall. Witnesses: Lee Daniel. B. E. Capps.

STATE OF OKLAHOMA,
County of Tulsa:

Before me, the undersigned, a Notary Public in and for said County and State, on this 22nd day of January, 1916, personally appeared Robert Marshall, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written. [Seal.] C. B. Rowe, Notary Public. My commission expires Feb. 24, 1917.

Exhibit "C."

20 **QUIT CLAIM DEED.**

Know all men by these presents:

That Robert Marshall and S. J. Smith, Trustee, parties of the first part, in consideration of the sum of One and other good and valuable considerations, Dollars, in hand paid, the receipt of which is hereby acknowledged, does hereby quit claim, grant, bargain, sell and convey unto J. P. Flanagan, the following described real property and premises situate in Creek County, State of Oklahoma, to wit:

The West Half (W. ½) of the Southwest Quarter (S. W. ¼) of Section Twenty-nine (29), and East Half (E. ½) of the Southeast Quarter (S. E. ¼) of Section Thirty (30), Township Eighteen (18) North, Range Twelve (12) East.

together with all the improvements thereon and appurtenances thereunto belonging.

To have and to hold said described premises unto said party of the second part, his heirs and assigns forever.

Signed and delivered this 13th day of October, 1916. Robert Marshall. S. J. Smith, Trustee. Signed in the presence of ——.

STATE OF OKLAHOMA,
Creek County, ss:

Before me the undersigned, a Notary Public in and for said County and State, on this 13th day of October, 1916, personally appeared Robert Marshall and S. J. Smith, Trustee, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein
21 set forth.

Witness my official hand and seal the day and date above written. [Seal.] Catherine E. Wright, Notary Public. My Commission expires July 12, 1920.

[Endorsement omitted.]

22 [Title omitted.]

ANSWER OF TIDAL OIL COMPANY.

Now comes the defendant, Tidal Oil Company, and for its answer to the first cause of action pleaded in plaintiff's petition, alleges and says:

It admits that Robert Marshall was and is a citizen of the Creek Nation, and is duly enrolled as a Creek Freedman, and that as such citizen, he received as his allotment of land therein the lands described in the plaintiff's petition, and that patents were issued therefor.

It admits the allegations of said petition that the said Robert Marshall sold and conveyed the said lands to the plaintiff, by his deeds of January 22nd and October 13, 1916, but it denies that the plaintiff holds possession of said land adversely to this defendant, but, on the contrary, alleges and shows to the court that it is, and was long prior to the purchase of said land by the plaintiff, in actual possession thereof, with the knowledge and consent of said plaintiff, and was, and is, operating said land for oil and gas, with the
23 knowledge and consent of said plaintiff, under oil and gas mining leases hereinafter more particularly described and set forth, and of which oil and gas mining leases the plaintiff had notice and knowledge long prior to the date of his deeds from Robert Marshall.

That on October 25, 1909, E. M. Arnold, W. W. Hyams and S. C. Lawson obtained a deed from the allottee, Robert Marshall, to the West Half (W. ½) of the Southwest Quarter (S. W. ¼) of Section Twenty-nine (29) and the Northeast Quarter (N. E. ¼) of the Southeast Quarter (S. E. ¼) of Section thirty (30), and on October 27, 1909, said Robert Marshall executed and delivered to said Arnold, Hyams and Lawson an option to sell and convey the Southeast Quarter (S. E. ¼) of the Southeast Quarter (S. E. ¼) of his said allotment; that later in the year 1909, said Robert Marshall, by his next friend and guardian, brought his action in the District Court of Creek County, Oklahoma, against said E. M. Arnold, W. W. Hyams and S. C. Lawson, to recover possession of said land so conveyed by him to the said Arnold, Hyams and Lawson, and to have his said deed and his said option contract cancelled and set aside on the ground that he was a minor at the time of the execution of said deed; that the said defendants were duly served, and that a trial of said cause as had upon the merits, and that on May 16, 1910, the court rendered a judgment in said cause, finding the issues therein against the plaintiff, and in favor of the defendants, and adjudging said option to be a valid and binding contract, and that said defendants had good title to the said lands, under and by virtue of the said deed of October 25, 1909; that the plaintiff afterwards filed his motion to vacate and set aside the said judgment, and that the same was heard by the court, which, upon consideration thereof, denied said motion to vacate and set aside said judgment.

Further answering, this defendant says that on May 31,
24 1910, said E. M. Arnold, W. W. Hyams and S. C. Lawson executed and delivered to Orient Oil & Gas Company an oil and gas mining lease covering the Northwest Quarter (N. W. ¼) of the Southwest Quarter (S. W. ¼) of Section twenty-nine (29), and the Southeast Quarter (S. E. ¼) of the Southeast Quarter (S. E. ¼) of Section thirty (30), and also on the same day, executed and delivered to Arkansas Oil Company an oil and gas mining lease covering the Northeast Quarter (N. E. ¼) of the Southeast (S. E. ¼) of said section thirty (30) and the Southwest Quarter (S. W. ¼) of the Southwest Quarter (S. W. ¼) of said Section Twenty-nine (29), and that said lessees went into possession of said land under

said leases, copies of which said leases are hereto attached, marked exhibits "A" and "B" and made a part hereof.

That the said E. M. Arnold, prior to June 30, 1913, purchased from the said W. W. Hyams and S. C. Lawson their interest in the said land acquired under the deed of October 25, 1909, and obtained their deeds of conveyance to their interest, title and estate in and to said land.

That on June 30, 1913, the said E. M. Arnold, by way of compromising said judgment, entered into an agreement with James Harris, who was then the duly appointed, acting and qualified guardian of said Robert Marshall, an incompetent, by which the said Arnold agreed to reconvey the said land to said Robert Marshall, and to pay all taxes which had accrued thereon, and which were a lien on the same, under which said guardian, on behalf of the said ward, agreed to accept said conveyance and the payment of all the taxes thereon, and that the oil and gas leases which had theretofore been executed upon said land by the said E. M. Arnold, W. W. Hyams and S. C. Lawson to Orient Oil & Gas Company and Arkansas Oil Company were recognized to be valid and binding leases, and
25 that said lessees or their assigns might continue to operate the said lands for oil and gas under the terms of sail oil and gas leases, and further agreed that three-fourths of the royalty reserved in said oil and gas leases should be paid to the said E. M. Arnold, and one-fourth thereof should be paid to the allottee, Robert Marshall, a copy of which said agreement is hereto attached, marked exhibit "C" and made a part of this answer. That said agreement was made and entered into with the approval, and was approved by the County Court of Creek County, Oklahoma, the court having jurisdiction of the person and estate of said Robert Marshall, a copy of which order of the court is hereto attached, marked exhibit "D" and made a part of this answer. That the said land was, pursuant to such agreement, reconveyed to the said Robert Marshall by a deed executed June 30, 1913, by the said E. M. Arnold and his wife, That by virtue of said agreement, so approved by the court as aforesaid, the said leases, so far as they affected the surplus portion of the allotment of Robert Marshall, and the land so reconveyed to the allottee by E. M. Arnold, became effective as valid and binding leases, and that the same were, by said agreement, and by the approval of said agreement by said county court, adopted and given the same force and effect as if regularly executed by the guardian to said lessees, with the approval of said court.

That on July 12, 1915, said Orient Oil & Gas Company made, executed and delivered to this defendant, its assignment transfer and conveyance of said lease covering the Northwest Quarter (N. W. ¼) of the Southwest Quarter (S. W. ¼) of Section Twenty-nine (29) and the Southeast Quarter (S. E. ¼) of the Southeast Quarter (S. E. ¼) of Section thirty (30), and which assignment and
26 conveyance was also executed by C. E. Suppes and R. L. Davidson, who claimed to own an interest therein, with said Orient Oil & Gas Company. That on August 1, 1915, said Arkansas Oil Company made, executed and delivered to this defendant, its

assignment, transfer and conveyance of its lease covering the northeast quarter (N. E. ¼) of the Southeast Quarter (S. E. ¼) of Section thirty (30) and the Southwest Quarter (S. W. ¼) of the Southwest Quarter (S. W. ¼) of Section twenty-nine (29), for both of which assignments this defendant paid, at the time of the execution thereof, more than Fifteen Thousand Dollars ($15,000.00). That immediately after the execution of said assignments, this defendant entered into possession of the said lands, and has ever since remained in possession thereof, drilling and operating the same for oil and gas, under the terms of said oil and gas mining leases, and has been, and is now, spending large sums of money in drilling and developing said lands for oil and gas.

That on August 29, 1915, one Vance Likely, who was then the duly appointed, acting and qualified guardian of said Robert Marshall, the allottee, by authority of the County Court of Creek County, the court having jurisdiction of the person and estate of said Robert Marshall, entered into an agreement with this defendant under which the execution of the lease by said E. M. Arnold, W. W. Hyams and S. C. Lawson, so far as the same affected the Southeast Quarter (S. E. ¼) of the Southwest Quarter (S. W. ¼) of section twenty-nine (29), being the homestead portion of the allotment of said Robert Marshall, was acknowledged, approved, ratified and confirmed, and by which said agreement, the said Vance Likely, as guardian of said Robert Marshall, did remise, release and *and* quitclaim to this defendant, which was then in actual possession of said
27 land, under its said assignments, all the oil and gas mining rights and privileges in and to said land, and by which said agreement, one-fourth of the one-eighth royalty provided and specified in said lease was reserved to the said Robert Marshall, and to his estate, a copy of which said agreement is hereto attached, marked exhibit "E" and made a part hereof. That said agreement was duly approved by the said County Court of Creek County, Oklahoma, by an order entered and filed in said cause, a copy of which order is hereto attached, marked exhibit "F" and made a part of this answer, and that, by virtue of said agreement, so approved by said court as aforesaid, the said lease, so far as it affected the southeast quarter (S. E. ¼) of the Southwest Quarter (S. W. ¼) of said section twenty-nine (29) became effective as a valid and binding lease and was thereby adopted by said guardian and by said court, and given the same force and effect as if regularly executed by the guardian to such lessee with the approval of said court.

That the plaintiff, at the date of his conveyances from said Robert Marshall, had full knowledge and notice of all the matters and things hereinabove alleged and set forth, and of the defendant's possession of said land under said leases, agreements and orders of said court, and that the defendant had spent, and was spending, large sums of money in developing said land for oil and gas, and this defendant avers and says that the plaintiff's purchase of said lands and his deeds from said Robert Marshall, the allottee, were, and are, subject to the rights and prior equities of this defendant under said leases, agreements and orders of court, and the assignments of said

leases to it in good faith, for a valuable consideration, and this defendant further denies that said leases are null and void and
28 a cloud upon the title of said plaintiff to said lands.

2.

This defendant, for its answer to the second cause of action in plaintiff's petition, re-alleges all the matters and things set forth in its answer to the first cause of action of said petition, with the same effect as if specifically set forth herein, but denies that the plaintiff is now the owner of the exclusive right to operate, drill and develop the said lands for oil and gas, as alleged in his said petition, and denies that this defendant is trespassing upon said land, but, on the contrary, alleges that it is lawfully in possession thereof under the leases so approved, ratified and confirmed as hereinbefore alleged and set forth in its answer to the first cause of action in plaintiff's petition, which said allegations are referred to and made part of this answer, the same as if specifically re-alleged; that this defendant has been since the date of its said assignments, and is now, operating said land for oil and gas, and is, and has been, extracting oil and gas therefrom, under the terms of said leases, and will continue to do so, so long as the same shall continue in force and effect.

3.

Further answering the plaintiff's petition, and each and both of his said causes of action, and for an additional defense thereto, this defendant alleges and says that the plaintiff ought not to maintain his said action, or to have the relief prayed for in his said petition, because this defendant has been in possession of said lands and has been drilling and operating the same for oil and gas under the oil and gas mining leases and the agreements relative thereto, and the order of court approving the same, and the assignments of
29 said leases to it, all of which are set forth and described in its answer to the plaintiff's first cause of action, and all of which said allegations are made a part of this answer as if specifically re-alleged and set forth herein; that said leases provided for the payment of certain royalties, to wit: a one-eighth portion of the proceeds of the oil and gas produced from said land, payable under the terms of said leases, agreements and orders of court, and one-fourth to Robert Marshall, the owner of the fee, and three-fourths to the defendant, E. M. Arnold; that this defendant has duly paid all royalties and moneys accruing under said leases, agreements and orders of court, to the parties entitled thereto; that upon the purchase of said land by the plaintiff and upon notice to this defendant by the plaintiff of such purchase, and upon demand by him from this defendant, the defendant paid to said plaintiff, for a long period of time, to wit, from the date of his conveyance from said allottee to shortly before the commencement of this suit, that portion of the royalties accruing under said lease and theretofore paid to and accepted by Robert Marshall, to wit: the one-fourth part of the royalty provided by said

lease, and the said plaintiff accepted the same without objection or complaint of the matters now alleged in his said petition, and that such royalties were demanded by the said plaintiff, and paid to, and accepted by, him, with full knowledge, that the same accrued and were paid under and by virtue of the terms of said leases, agreements and orders of court, and could not otherwise accrue or be payable, and that the plaintiff thereby acknowledged said leases and the validity thereof and the right of the defendant to operate and develop the said land for oil and gas thereunder, and is now estopped from asserting that said leases are void and without effect, or to deny the
30 right of the defendant to develop and operate said land and take therefrom the oil and gas subject to the payment of the royalties therein provided by virtue of said oil and gas mining leases.

4.

Further answering, to the plaintiff's petition, this defendant alleges and says that since the deed of conveyance of the land in said petition described by Robert Marshall to the plaintiff, on January 22, 1916, to wit, beginning in the month of February of said year and continuing up to and including September of said year, this defendant paid to E. M. Arnold the three-fourths portion of the one-eighth royalty provided in the lease of the Orient Oil & Gas Company and the lease of Arkansas Oil Company, and assigned to this defendant, and that it paid, during the same period of time, to the plaintiff, the remaining one-fourth part of said royalties; that said payments were made as aforesaid under and by virtue of the agreements between James Harris, as guardian of Robert Marshall, with Orient Oil & Gas Company and Arkansas Oil Company, and between Vance Likely, as guardian of said Robert Marshall aforesaid and this defendant, and the orders of court approving the same; that the payments of said three-fourths portion of the royalties to said E. M. Arnold were made with the consent and knowledge of this plaintiff, for the said months of February, March, April, May, June, July, August and September, 1916, during which period said plaintiff was the owner of the fee in and to said land, under his deed of January 22, 1916, and that said plaintiff received and accepted the one-fourth portion of the royalties accruing under said leases for each of said months without objection or complaint, and with full knowledge that the remaining three-fourths por-
31 tion of said royalties were being paid to the said E. M. Arnold, and whereby the said plaintiff, as the owner of the fee in and to said lands, did acknowledge, ratify and confirm the said leases and the said agreements between James Harris, the guardian of said Robert Marshall, and Orient Oil & Gas Company and Arkansas Oil Company, and between Vance Likely, as guardian of said Robert Marshall, and this defendant, and the said plaintiff is now estopped from asserting the invalidity of said leases and agreements, and from denying the right of the defendant in and under said leases and agreements to drill, develop and operate

said lands for oil and gas, and to pay the royalties accruing under said leases in the manner provided by said agreements and the orders of said county court.

Wherefore, this defendant, having fully answered the petition of the plaintiff, and having alleged and set forth its right, title, estate and interest in and to said land prays:

1st. That the plaintiff take nothing in and by his said petition.

2nd. That the oil and gas mining leases under which this defendant holds possession of said lands be declared and adjudged to be valid and binding leases, according to the terms thereof.

3rd. That the plaintiff be restrained and enjoined from interfering with the possession of the defendant under said oil and gas mining leases and with their right to drill, develop and operate said lands for oil and gas, under the terms of said leases, and from asserting any claim or right inconsistent with or adverse to the right of the defendant to drill, develop and operate said lands for oil and gas.

32 4th. That the title, estate and interest of the defendant in and to the said lands under said oil and gas mining leases be quieted as against any adverse claim by the plaintiff under his deeds from the said Robert Marshall.

5th. That the said defendant have and recover its costs in this action. West, Sherman & Davidson, Attorneys for defendant, Tidal Oil Company.

33

EXHIBIT "B."

Oil and Gas Lease.

This agreement, Made and entered into this 31st day of May, A. D. 1910, by and between E. M. Arnold, W. W. Hyams, and S. C. Lawson, of Tulsa, Oklahoma, parties of the first part, and Arkansas Oil Company, of Tulsa, Oklahoma, party of the second part;

Witnesseth, That the said parties of the first part, for and in consideration of the covenants and agreements hereinafter inserted and the sum of One Dollars in hand and hereby acknowledged, have granted, demised and let unto the party of the second part, — successors and assigns, for the purpose and exclusive right of drilling and operating for and procuring oil and gas, all of the following described property, to wit:

Southwest Quarter of Southwest Quarter of Section 29, and Northeast Quarter of Southeast Quarter of Section 30, all in Township 18 North, Range 12 East,

situated at Creek County, Oklahoma, to any extent the said party of the second part may deem advisable, together with the right to lay, erect, and maintain all necessary pipe and pipe lines, tanks, structures, rods, cable and all other fixtures and machinery used in drilling for, pumping, preserving, storing and transporting the product on said premises. The party of the second part shall fur-

ther have the right of using sufficient water from the premises for operating purposes, and if necessary the right to drill for it on said premises.

The party of the second part to have and to hold the premises for and during a term of fifteen years from date hereof, and as much longer as oil and gas is found or produced in paying quantities thereon.

34 In consideration of the said grant and demise, the party of the second part agrees to deliver to the parties of the first part, one-eighth of the oil realized from the premises, in tanks at the well without cost. If gas is found in any well or wells on said premises, the parties of the first part *is* to have, upon demand, sufficient gas for domestic purposes free of charge; the remainder, with all the gas from the oil wells, to go to the party of the second part. If the party of the second part shall market any gas from any well producing gas only, then the parties of the first part shall receive therefor at the rate of One Hundred and Fifty Dollars per annum for all gas so marketed or sold.

The party of the second part agrees to locate wells so as not to interfere any more than is reasonably necessary with the houses on the premises.

The party of the second part further agree- that in case no well is drilled for oil or gas within — year from the date hereof, all rights and obligations secured under this grant and demise shall cease upon notice in writing being served by part— of the first part, unless the part— of the second part shall elect from year to year to continue this grant and demise in force as to any or all portions of the premises by paying in advance an annual rental of $— per — for all of said —, or such portion thereof as the part— of the second party may designate, until a well is drilled, provided that, upon the completion of said well, the above provided for rentals shall cease. All payments of said rentals to be made at the —, to the credit of the part— of the first part.

35 The party of the second part shall have the right to remove any and all fixtures placed upon said premises.

The party of the second part shall have the right to discharge any incumbrances upon said premises and shall have a lien thereon for the amount so paid, together with all costs and expenses incurred.

It is hereby further agreed that the part— of the second part shall have the right at any time to surrender and terminate this grant and demise by serving written notice upon the part— of the first part of such intention, after which all payments or liabilities to accrue shall cease and determine.

All rights and obligations under this grant and demise shall extend to and be binding upon the heirs, executors or administrators, successors and assigns of the parties hereto.

In witness whereof, The parties have hereunto set their hands and seals the day and year first above written. (Signed) E. M. Arnold. (Seal.) W. W. Hyams. (Seal.) S. C. Lawson. (Seal.) Arkansas Oil Company, by J. A. Hull, Pres. Witnesses to Signature: (Signed) Harry Campbell.

36 STATE OF OKLAHOMA,
Creek County, ss:

Before me, a H. A. Cunningham, Notary Public in and for said county and State, on this 31st day of May, 1910, presonally appeared E. M. Arnold, W. W. Hyams and S. C. Lawson, to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

In Witness Whereof, I have hereunto set my hand and official seal the day and year last above written. (Seal.) (Signed) H. A. Cunningham, Notary Public. My commission expires —— —, ——. (Expiration of commission given on seal as May 9, 1914.)

37 **EXHIBIT "C."**

Contract.

This agreement, made and entered into this 30th day of June, 1913, by and between E. M. Arnold, party of the first part, and James Harris, guardian of Robert Marshall, party of the second part;

Witnesseth: Whereas, the said Robert Marshall, on the 22nd day of October, 1909, representing himself to be of age, conveyed by warranty deed to E. M. Arnold, W. W. Hyams and S. C. Lawson,

The East Half (E. ½) of the Southeast Quarter (S. E. ¼) of Section Thirty (30), and the West Half (W. ½) of the Southwest Quarter (S. W. ¼) of Section Twenty-nine (29), Township Eighteen (18) North, Range Twelve (12) East, in Creek County, Oklahoma, and the Southwest Quarter (S. W. ¼) of the Southwest Quarter (S. W. ¼) of Section Twenty-nine (29), Township Eighteen (18) North, Range Twelve (12) East,

for which deed a valuable consideration was paid; and

Whereas, suit was filed in the District Court of Creek County, Oklahoma, on the 1st day of November, 1909, by the said Robert Marshall, by his next friend, R. B. Thompson, to cancel said deed and have same declared null and void, on the grounds that said Robert Marshall was a minor at the time he made said deed, and on other grounds; and

Whereas, said cause was tried in the District Court of Creek County, State of Oklahoma, and on the 16th day of May, 1910, the District Court of Creek County, Oklahoma, after hearing found that the title of the said E. M. Arnold, W. W. Hyams and S. C. Lawson was good, and that said conveyance was valid, and quieting the title of said parties in said lands against the claims of the said Robert Marshall; and

Whereas, on the 8th day of December, 1911, a petition was filed in said cause by the said Robert Marshall to have said cause
38 reviewed and vacate and set aside said judgment; and

Whereas, on the 30th day of June, 1913, the District Court of Creek County, after hearing said petition and being fully advised

in the premises, decided that said judgment was valid and binding and refused to set same aside;

Now, Therefore, in order to settle said matter and to compromise said dispute, and to finally settle any question as to the interest of the parties in the premises, and to prevent an appeal being taken to the Supreme Court, party of the first part, E. M. Arnold, who has acquired all of the right, title and interest of the said W. W. Hyams, and S. C. Lawson, agrees to reconvey said land to the said Robert Marshall, but reserves the right to collect three-fourths (¾) of the royalty from oil and gas produced on said land, and agrees to pay all of the accrued taxes on said land, the amount to be so paid to be ascertained by taking the aggregate amount of all of the unpaid taxes for the years 1912 and previous years, and all penalty, interest, costs and expenses that has accrued against said premises by reason of said unpaid taxes, and by reason of any tax sales that may have been made and to pay all of said aggregate amount, the payment to be applied in redeeming said land from any tax sales that may have been made.

Party of the second part agrees to accept said conveyance and the payment of all of the aggregate amount of said taxes, fees and expenses by reason of taxes against said land, and agrees that party of the first part shall reserve three-fourths (¾) of the royalty from oil and gas to be produced on said land and agrees that the oil and gas lease heretofore made on said land and under which the
39 parties now operating oil and gas wells on said land, their operating shall be recognized to be valid and binding, and that said lessees or their assigns may continue to operate for oil and gas on said premises, under the terms of said oil and gas lease, and that the said Robert Marshall receive only one-fourth (¼) of the royalties of oil and gas produced under said lease.

It is further agreed and understood that this contract is not to take effect nor become valid and binding until same is approved and confirmed by the county court of Creek County, Oklahoma,

Witness our hands this 30th day of June, 1913. E. M. Arnold, Party of the first part. James Harris, Guardian of Robert Marshall, Party of the second part.

40 **EXHIBIT "D."**

In the County Court, Creek County, Oklahoma.

No. 854.

In the Matter of the Guardianship of ROBERT MARSHALL, Minor; JAMES HARRIS, Guardian.

Order Confirming Settlement.

On this day came on to be heard the petition of James Harris, guardian of Robert Marshall, minor and incompetent, to have approved an agreement, settlement and compromise, of all matters

pertaining to the estate of the said Robert Marshall, heretofore pending in the District Court of Creek County, Oklahoma, wherein said estate was involved in litigation between E. M. Arnold and others, and said minor, by a next friend, Said compromise is in words and figures as follows, to wit:

(Here clerk copy compromise.)

And, the court, having heard proof pertaining thereto, and being fully advised in the premises, is of the opinion that it is to the best interest of said minor that said settlement and compromise be made according to the terms and tenor thereof.

It is, therefore, ordered, adjudged and decreed that said settlement and compromise be, and he same is in all things thereto pertaining approved, affirmed and ratified by this court, and the said guardian is directed and authorized to make and accept the same.

This 5th day of July, 1913. (C. S. Seal.) Warren H. Brown, County Judge.

41 **EXHIBIT "E."**

Agreement.

This agreement, Made and entered into on this 24th day of August, 1915, by and between Vance Likely, Guardian of Robert Marshall, a minor and an incompetent, of Sapulpa, Oklahoma, party of the first part, and Okla. Oil Company, a corporation of Tulsa, Oklahoma, party of the second part.

Witnesseth that:

Whereas, On the 31st day of May, 1910, E. M. Arnold, W. W. Hyams and S. C. Lawson, as lessors, executed and delivered a certain oil and gas lease to Arkansas Oil Company, for a valuable consideration, leasing and conveying to said Arkansas Oil Company, its successors and assigns, for oil and gas purposes, among other land, the Southwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, and

Whereas, there may be some question as to the authority of said E. M. Arnold, W. W. Hyams and S. C. Lawson, at the time of the date and execution of said lease, to make and execute said lease, and the title to said forty (40) acres above described has since been acquired by the said ward, Robert Marshall.

Now, therefore, for an- in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, the said Vance Likely, guardian of Robert Marshall, a minor and an incompetent, party of the first part herein, does hereby acknowledge, and by these presents he does now ratify, approve and confirm said oil and gas lease above referred to, dated May 31, 1910, and recorded in the office of the Register of Deeds of Creek County, Oklahoma, in Book 50, at page 501, and does remise, release and quit-claim unto the said Okla. Oil Company of Tulsa, Oklahoma, party of the second part herein, now in actual

possession of said land for oil and gas mining purposes by virtue of said aforementioned lease, and to its successors, and assigns,
42 all the oil and gas mining rights and privileges in and to said land, reserving the portion of the party of the first part of the royalties thereunder, to wit: one-fourth of one-eighth royalty in and to the forty (40) acres of land above described.

In witness Whereof, The parties hereto have hereunto set their hands and seal the day and year first above written. (Signed) Vance Likely, Guardian of Robert Marshall, a minor and an incompetent. Okla. Oil Company, by Sherman, Veasey & Davidson, Its Attorneys.

STATE OF OKLAHOMA,
County of ——, *ss:*

Before me, the undersigned, a Notary Public in and for said County and State, on this 24th day of August, 1915, personally appeared Vance Likely, Guardian of Robert Marshall, a minor and an incompetent, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth. [Seal.] (Signed) Chestina K. Maddox, Notary Public. My commission expires Oct. 24, 1917.

43 **EXHIBIT "F."**

In the County Court of Creek County, State of Oklahoma.

Probate. No. —.

In the Matter of the Guardianship of ROBERT MARSHALL, a Minor and an Incompetent; VANCE LIKELY, Guardian.

Order.

Now, on this 24th day of August, 1915, comes on for hearing the petition of Vance Likely, guardian herein, asking for the approval of a certain instrument ratifying and confirming a lease heretofore executed by the guardian of the ward herein in favor of Arkansas Oil Company, and assigned by Arkansas Oil Company to Okla. Oil Company, and the court having examined the said petition; heard the statements of counsel and the guardian, having examined the evidence, and having examined the instrument of ratification presented herewith for approval, and being fully advised in the premises,

It is ordered and adjudged that the agreement entered into on the 24th day of August, 1915, by and between Vance Likely, guardian of Robert Marshall, a minor and an incompetent, with Okla. Oil Company ratifying and confirming a certain oil and gas lease heretofore entered into by and between the guardian of said ward and Arkansas Oil Company, under date of May 31st, 1910; said lease having been assigned by Arkansas Oil Company to Okla. Oil Com-

pany, be and hereby is approved by this Court. [Seal.] (Signed) Vick S. Decker, Judge of the County Court of Creek County, Oklahoma.

44 [Endorsement omitted.]

45 [Title omitted.]

SEPARATE ANSWER OF ELEANOR ARNOLD.

(Filed Sept. 19, 1917.)

Comes now the defendant, Eleanor Arnold and for her answer to first cause of action in plaintiff's petition says:

1.

Defendant denies each and every allegation of plaintiff's petition not herein specifically admitted.

2.

She admits that Robert Marshall, executed a deed to the lands described in plaintiff's petition to plaintiff on January 22, and October 13, 1916, but says that the said Robert Marshall at said time was an incompetent and not mentally capable of conveying his land by deed, which fact was fully known to the plaintiff and this defendant denies that she holds possession of said lands adversely to plaintiff and denies that since said date she has held possession of said lands at all, but denies that she has been in possession of said lands, but states that long and prior to said dates, that defendant, Tidal Oil Company had been in possession of said lands and was and is
46 operating said lands for oil and gas with the knowledge and consent of plaintiff, under oil and gas mining leases hereinafter more particularly described and set forth and of which oil and gas mining leases, the plaintiff had notice and knowledge of long prior to the date of his deeds from Robert Marshall.

That on October 25, 1909, E. M. Arnold, W. W. Hyams and S. C. Lawson obtained a deed from said Robert Marshall to the W. ½ of S. W. ¼ Sec. 29; N. E. ¼ of S. E. ¼ Sec. 30; and, on October 27, 1909, said Robert Marshall executed and delivered to Arnold, Hyams and Lawson an option to sell and convey the S. E. ¼ of S. E. ¼ of his said allotment. That later in the year 1909, said Robert Marshall, by his next friend and guardian, brought his action in the District Court of Creek County, Oklahoma against said E. M. Arnold, W. W. Hyams and S. C. Lawson, to recover possession of said land so conveyed by him to the said Arnold, Hyams and Lawson, and to have his said deed and his said option contract cancelled and set aside on the ground that he was a minor at the time of execution of said deeds; that the said defendants were duly served and that a trial of said cause was had upon the merits, and that on May 16, 1910, the Court rendered a judgment in said cause finding the issues

against the plaintiff and in favor of the defendants and adjudging said option to be a valid and binding contract and that said defendants had a good title to said land under and by virtue of said deed of October 25, 1909; that the plaintiff afterwards filed his motion to vacate and set aside the said judgment and that the same was heard by the Court, which upon consideration thereof, denies said motion to vacate and set aside said judgment.

Further answering this defendant says: That on May 31, 1910, said E. M. Arnold, W. W. Hyams and S. C. Lawson, executed
47 and delivered to the Orient Oil & Gas Co., and oil and gas mining lease covering the N. W. ¼ of S. W. ¼ of Sec. 29, and S. E. ¼ of S. E. ¼ of Sec. 30, and also on the same day delivered to the Arkansas Oil Co., and oil and gas mining lease covering the N. E. ¼ of S. E. ¼ of said Section 30, and S. W. ¼ of S. W. ¼ of Section 29, and that said lessees went into the possession of said land under said leases, copy of which *was* leases are hereto attached marked exhibit- "A" and "B" and made a part hereof.

That the said E. M. Arnold prior to June 30, 1913, purchased from the said W. W. Hyams and S. C. Lawson, their interest in the said lands acquired under the deed of October 25, 1909, and obtained their deeds of conveyance to their interests in and to the title and estate in and to said land.

That on June 30, 1913, the said E. M. Arnold by way of compromising said judgment, entered into an agreement with James Harris, who was then the duly qualified and acting guardian of said Robert Marshall, an incompetent, by which the said Arnold agreed to re-convey the said land to Robert Marshall and to pay all taxes which had accrued thereon and which were a lien on same, under which said guardian, on behalf of the said ward, agreed to accept said conveyance and the payments of all the taxes thereon and that the oil and gas leases, which had theretofore been executed upon the said land by the said E. M. Arnold, W. W. Hyams and S. C. Lawson to Orient Oil & Gas Co., and Arkansas Oil Co., were recognized to be valid and binding leases and the said lessees or their assigns might continue to operate the said lands for oil and gas under the terms of said oil and gas leases and further agreed that three-fourths of the royalty reserved in said oil and gas leases should be paid to the said E. M. Arnold and one-fourth thereof, should be paid to the
48 allottee, Robert Marshall, a copy of which said agreement is hereto attached marked exhibit "C" and made a part of this answer. That said agreement was made and entered into with the approval and was approved by the County Court of Creek County, Oklahoma, the Court having jurisdiction of the person and estate of said Robert Marshall, an incompetent; a copy of which order of this court is hereto attached and marked exhibit "D" and made a part of this answer.

That the said land was, pursuant to such agreement, re-conveyed to the said Robert Marshall, by a deed executed June 30th, 1913, by the said E. M. Arnold and his wife; that by virtue of said agreement, so approved by the Court as aforesaid, the said leases, so far as they effected the surplus portion of the allotment of Robert Marshall, and

the land so re-conveyed to the allottee by E. M. Arnold, became effective as valid and binding leases, and that the same were by agreement and by approval of said agreement by said County Court, adopted and given the same force and effect as if regularly executed by the guardian to said lessees with the approval of said court.

That on July 12, 1915, the said Orient Oil & Gas Co., made, executed and delivered to the defendant, Tidal Oil Co., its assignment, transfer and conveyance of said leases covering the N. W. ¼ of the S. W. ¼ of Section 29, and S. E. ¼ of S. E. ¼ of Section 30; and which assignment and conveyance was also executed by C. E. Suppes and R. L. Davidson, who claimed to own an interest therein with the said Orient Oil & Gas Co.; that on August 1, 1915, the said Arkansas Oil Co., made, executed and delivered to the Tidal Oil Co., an assignment and conveyance of its leases covering the N. E. ¼ of S. E. ¼ of Section 30; and S. W. ¼ of S. W. ¼ of Section
49 29; for both of which assignments the Tidal Oil Co., paid at the time of execution thereof, more than $15,000.00. That immediately after execution of said assignment, the Tidal Oil Co., entered into possession of said lands and has ever since remained in possession thereof, drilling and operating the same for oil and gas under the terms of said leases and has been and is now spending large sums of money drilling and developing said lands for oil and gas.

That on August 29, 1915, one Vance Likely, who was then the duly appointed, acting and qualified guardian of said Robert Marshall, the allottee, by authority of the County Court of Creek County, the Court having jurisdiction of the person and estate of Robert Marshall, entered into an agreement with the defendant, Tidal Oil Co., under which the execution of the lease by said E. M. Arnold, W. W. Hyams and S. C. Lawson so far as the same effected the Southeast Quarter of the Southeast Quarter of Section 29, being the homestead portion of the allotment of said Robert Marshall, was acknowledged, approved, ratified and confirmed and by which said agreement the said Vance Likely, as guardian of said Robert Marshall, an incompetent, did remise, release and quit claim to Tidal Oil Co., which was then in actual possession of said land under its said assignments of all the oil and gas mining rights and privileges in and to said land by which said agreement, one-fourth of the one-eighth royalty provided and specified in said lease was reserved to the said Robert Marshall, an incompetent, and to his estate; a copy of which said agreement is hereto attached and marked exhibit "E" and made a part hereof. That said agreement was duly approved by the County Court of Creek County, Oklahoma, by an order entered and filed in said cause; a copy
50 of which order is hereto attached marked exhibit "F" and made a part of this answer; and, that by virtue of said agreement, so approved by said Court aforesaid, the said lease, so far as it effected the S. E. ¼ of S. W. ¼ of Section 29, became effective as a valid and binding lease and thereby adopted by said guardian and said Court and given the same force and effect as if regularly

executed by the guardian to such lessee with the approval of the Court.

3.

That previous to the conveyances from Robert Marshall to plaintiff, the said E. M. Arnold conveyed all his right, title and interest in and to the royalties on the oil and gas derived from said land to the defendant, Eleanor Arnold.

That the plaintiff, at the date of his conveyance from the said Robert Marshall, had full knowledge and notice of all the matters and things above alleged and set forth and of the defendant's, Tidal Oil Co., possession of said land under said leases, agreement and orders of said court and that the defendant, Tidal Oil Co., had spent and was spending large sums of money developing said land for oil and gas and also had full knowledge of this defendant's claim to said royalty; and this defendant alleges that the plaintiff's purchase of said land and his deeds from said Robert Marshall, the allottee were and are subject to the rights and prior equities of the defendants, under said leases, agreement and orders of Court and the assignments of said leases to the defendants for valuable consideration and this defendant denies that said leases are null and void and a cloud upon the title of plaintiff.

This defendant further states that after the plaintiff took his deeds to said land aforesaid, he had full knowledge and notice of all the circumstances and conditions surrounding said land
51 and said leases, agreement and orders of Court and that the Tidal Oil Co., was operating said land for oil and gas under said leases and full knowledge of all of said facts, accepted from the Tidal Oil Co., the royalty provided for in said leases and contracts that had theretofore been paid to Robert Marshall, and by so receiving and accepting said royalties, he ratified said leases in all their terms and is now estopped from denying the validity thereof.

2.

Defendant for her answer to second cause of action set up in plaintiff's petition says:

(1) She denies each and every allegation contained in plaintiff's second cause of action, not herein specifically admitted.

(2) She adopts the allegations of her answer to plaintiff's first cause of action as above set forth as fully as if herein set forth specifically.

3.

Further answering plaintiff's petition and each and further of said causes of action and for an additional defense thereto, this defendant alleges and says:

That the plaintiff ought not to maintain his said action or to have the relief prayed for in his said petition because the defendant, Tidal Oil Co., has been in possession of said land, been drilling and operating the same for oil and gas under oil and gas min-

ing leases and the agreement relative thereto, and the orders of court approving same and assignments of said leases to it, all of which are set forth and described in defendant's answer to plaintiff's first cause of action and all of which *was* allegation
52 are made a part of this answer as if specifically re-alleged and set forth herein.

That said leases provided for the payment of certain royalties, to wit:

A one-eighth portion of the proceeds of the oil and gas produced from said la*dn*, payable under the terms of said leases, agreement and orders of Court, and that one-fourth of one-eighth royalty should be paid to Robert Marshall, the owner of the land and three-fourths to the defendant, E. M. Arnold and which said E. M. Arnold had assigned and transferred to this defendant; that the Tidal Oil Co., has duly paid all royalties and moneys accruing under said leases, agreement and orders of court, to the parties entitled thereto, that is, to say to guardian of Robert Marshall, an incompetent, or to Robert Marshall, up to the time of his sale of said land to the plaintiff and after the sale of said land to plaintiff. That the one-fourth of the royalty which had gone to Robert Marshall was thereupon paid to the plaintiff and the three-fourths royalty to this defendant. That the said Tidal Oil Co., paid to the plaintiff upon his demand for a long period of time, to wit: From the date of his conveyance from the said allottee to the time of commencement of this suit, the said one-fourth of the royalty. That the plaintiff had full knowledge and notice of all of said leases, agreement and orders of court and that the operations of said land by the Tidal Oil Co., for oil and gas and with such knowledge, demand- and accepted said royalties without objection or complaint, and with full knowledge that the same accrued and were paid under and by virtue of said leases, agreement and orders of court, and cannot otherwise accrue or be payable and that the plaintiff thereby acknowledged said leases and the validity
53 thereof and the right of the said Tidal Oil Co., to operate and develop the said land for oil and gas thereunder, and to pay this defendant three-fourths of the royalty therefrom and thereby fully ratified said leases, agreement and orders of Court and is now estopped from asserting that said leases are void and without effect or to object in any manner to said leases and agreements or to deny the rights of any of the defendants thereunder.

4.

Further answering, to the plaintiff's petition, this defendant alleges and says that since the deed of conveyance of the land in said petition described by Robert Marshall to the plaintiff, on January 22, 1916, to wit: beginning in the month of February of said year and continuing up to and including September of said year, the Tidal Oil Co., paid to this defendant, Eleanor Arnold the three-fourths portion of the one-eighth royalty provided in the lease of the Orient Oil & Gas Company and the lease of the Arkansas Oil

Company, and assigned to the Tidal Oil Co., and that it paid, during the same period of time, to the plaintiff, the remaining one-fourth part of said royalties; that said payments were made as aforesaid under and by virtue of the agreements between James Harris, as guardian of Robert Marshall, with Orient Oil & Gas Company and Arkansas Oil Company, and between Vance Likely, as guardian of said Robert Marshall aforesaid and defendants, and the orders of court approving the same; that the payments of said three-fourths portion of the royalties to this defendant were made with the consent and knowledge of this plaintiff, for the said months of February, March, April, May, June, July, August, and September, 1916, during which period said plaintiff was the owner of the fee in and to said land, under his deed of January 22, 1916, and that
54 said plaintiff received and accepted the one-fourth portion of the royalties accruing under said leases for each of said months without objection or complaint, and with full knowledge that the remaining three-fourths portion of said royalties were being paid to this defendant, and whereby the said plaintiff, as the owner of the fee in and to said lands, did acknowledge, ratify and confirm the said leases and the said agreements between James Harris, the guardian of said Robert Marshall, and Orient Oil & Gas Company and Arkansas Oil Company, and between Vance Likely, as guardian of said Robert Marshall, and defendant, Tidal Oil Co., and the plaintiff is now estopped from asserting the invalidity of said leases and agreements, and from denying the right of the defendant, Tidal Oil Co., in and under said leases and agreements to drill, develop and operate said lands for oil and gas, and to pay the royalties accruing under said leases in the manner provided by said agreements and the orders of said county court.

Wherefore, This defendant, having fully answered the petition of the plaintiff, and having alleged and set forth its right, title, estate and interest in and to said land, prays:

1st. That the plaintiff take nothing in and by his said petition.

2nd. That the oil and gas mining leases under which this defendant holds possession of said lands be declared and adjudged to be valid and binding leases, according to the terms thereof.

3rd. That the plaintiff be restrained and enjoined from interferring with the possession of the Tidal Oil Co., under said oil and gas mining leases and with its right to drill, develop and operate said lands for oil and gas, under the terms of said leases, and from asserting any claim or right inconsistent with or adverse to
55 the right of the defendant to drill, develop and operate said lands for oil and gas.

4th. That the title, estate and interest of this defendant in and to the royalty under said oil and gas mining leases be quieted as against any adverse claim by the plaintiff under his deeds from the said Robert Marshall.

5th. That the said defendant have and recover her costs in this action. Biddison & Campbell, Attorneys for Defendant Eleanor Arnold.

56–58 **EXHIBIT "B."**

[Omitted; printed p. 33.]

59–61 **EXHIBIT "C."**

[Omitted; printed p. 37.]

62 [Omitted; printed p. 40.]

[Omitted; printed p. 40.]

63–64 **EXHIBIT "E."**

[Omitted; printed p. 41.]

65 **EXHIBIT "F."**

[Omitted; printed p. 43.]

66 [Endorsement omitted.]

67 [Title omitted.]

SEPARATE ANSWER OF E. M. ARNOLD.

[Filed Sept. 19, 1917.]

Comes now, E. M. Arnold, one of the above named defendants, and for his answer to the first paragraph of plaintiff's petition filed herein says:

1.

This defendant was not at the time of filing plaintiff's petition, nor has he at any time since, nor is he now in possession of the land described in plaintiff's petition or any portion thereof, nor did he at that time nor does he claim any right, title or interest in and to said land.

2.

Defendant for his answer to the second paragraph of plaintiff's answer, denies that on the 16th day of October, 1916, or at any time since said date, he has been in possession of, or has he trespassed on the land described in plaintiff's petition, nor has he taken or carried away any oil or gas from said land or received any money therefrom or converted same to his own use, and says that on the 16th day of October, 1916, nor at any time since said date has
68 he claimed any right, title or interest in said land or the oil or gas derived therefrom.

Defendant prays that he be discharged with his costs. Biddison & Campbell, Attorneys for Defendant E. M. Arnold.

[Endorsement omitted.]

69 [Title omitted.]

REPLY OF PLAINTIFF TO SEPARATE ANSWER OF TIDAL OIL COMPANY.

[Filed Jan. 23, 1918.]

Comes the plaintiff, J. P. Flanagan, and by way of reply to the separate answer of Tidal Oil Company, denies each and every material allegation of said separate answer. Edw. H. Chandler, Farrar L. McCain, Geo. T. Brown, Attorneys for the plaintiff J. P. Flanagan.

[Endorsement omitted.]

70 [Title omitted.]

REPLY OF PLAINTIFF TO SEPARATE ANSWER OF ELEANOR ARNOLD.

[Filed Jan. 23, 1918.]

Comes the plaintiff, J. P. Flanagan, and by way of reply to the separate answer of Eleanor Arnold, denies each and every material allegation of said separate answer. Edw. H. Chandler. Farrar L. McCain. Geo. T. Brown.

[Endorsement omitted.]

71 [Title omitted.]

CASE-MADE.

Be it also remembered That on to wit: the 10th day of July, 1919, the same being a day of the regular July 1919 Term of the District Court, this cause came on for trial before Honorable Lucien B. Wright, Judge of the District Court within and for Creek County, 22nd Judicial District, State of Oklahoma, upon the pleadings heretofore filed herein; Whereupon the following proceedings were had and evidence introduced herein, to wit:

Appearances: George T. Brown, Esquire, Tulsa, Oklahoma, Judge Summers Hardy, Tulsa, Oklahoma, John G. Ellinghausen, Esquire, Sapulpa, Okla., Attorneys for plaintiffs; Biddison & Campbell, Esqs., Tulsa, Aklahoma, Attorneys for defendants E. M. Arnold and Eleanor Arnold; West, Sherman, Davidson & Moore, Esqs., Tulsa, Attorneys for defendant Tidal Oil Co.

72 Whereupon Counsel for the respective parties make statements of their case to the Court.

Thereupon the plaintiff introduced in support of the contentions on his part the following evidence herein, to wit:

Mr. Brown. I now hand the Reporter two papers and will ask that he mark the same plaintiff's Exhibits One and Two respectively.

The last above mentioned papers are now handed to the Reporter and by him marked as requested and returned to Mr. Brown, and thereupon Mr. Brown hands the same to opposing counsel for examination.

Mr. Brown. Plaintiff now offers in evidence, if your Honor please, his Exhibit Number One, the same being a certified copy of the enrollment records of Robert Marshall, the allottee of the land in question.

Mr. Biddison. Objected to as incompentent, irrelevant and immaterial. There is no issue tendered here upon any question of this party's age anywhere, nor any question about his enrollment. There is no issue made in regard to his enrollment. We don't dispute his enrollment.

Mr. Brown. We offer that in evidence, if your Honor please, as showing his age.

Mr. Biddison. There is no issue in regard to that proposition.

Judge Hardy. May I ask if it is admitted by counsel that the allottee was a minor on the date referred to?

73 Mr. Biddison. The pleadings make all the issues we desire to make. We don't care to make any issue on this proposition that the party was a minor.

Judge Hardy. Counsel concedes his minority on the date alleged and they make no issue on that fact. Now I would like the record to show this.

Mr. Biddison. The record shows it is not material. The question of majority rights is not in this case at all. We don't plead it. We set up the judgment.

The Court. Objection overruled.

Mr. Biddison. Exception.

Mr. Davidson. Exception.

Plaintiff's Exhibit Number One is now read to the Court by Mr Brown, the same being in words and figures as follows, to wit:

74 Residence: Sapulpa, Okla. Town. *Creek Nation Freedman Roll.* Card No. 1767.

Post Office: ——. Tribal Enrollment. Field No. 1919.

Dawes roll No.		Name.	Relationship to person first named.	Age.	Sex.	Year.	Town.	No.	Slave of—	Remarks.
5449	1.	Marshall, Robert.....		9	M	....	Arkansas	....	.....	Father on Dunn
5450	2.	" Lillie	Sister....	6	F	....	.....	....	.....	Roll #943.
	3.									
	4.									
	5.	Enrollment Case No. 423.								
	6.	Enrollment of Nos. 5449 & 5450 Hereon Approved by the Secretary of Interior May 21, 1904.								
	7.									
	8.									
	9.									
	10.									
	11.	Citiz'p Certif. Issued for No. 1-2 Separately, July 20, 1904. L.								
	12.									
	13.									
	14.	March 17, 1904. Decision by Commission enrolling applicants.								
	15.	" 18, 1904. Copy of decision to Creek Attorney and 15 days allowed within which to protest—to protest.								
	16.	June 15, 1915. Ages given hereon as January 22, 1904 E. H. D.								
	17.	Date of application for enrollment January 22, 1904.								
	18.	Listed on this card April 7, 1904.								

Printed numbers in first column refer to individual name on reverse side. Additional information on reverse side.

Enrollment Record of Robert Marshall.

	Father's tribal enrollment.				Mother's tribal enrollment.			
	Name of father.	Year.	Town.	No. father's owner.	Name of mother.	Year.	Town.	No. mother's owner.
1.	Budkin Marshall	1895	Arkansas....	1289	Ella Marshall	.....	.....	U. S. Citizen
2.								
3.								
4.								
5.								
6.								

75 Department of the Interior,

Commission to the Five Civilized Tribes.

Muskogee, I. T., Jan. 22, 1904.

In the Matter of the Application for the Enrollment of ROBERT and LILLIE MARSHALL as Citizens Creek Freedmen.

Appearance: A. P. Murphy, Att'y for Creek Nation.

ELLA MARSHALL, being duly sworn, testified as follows:

Examination by the Commission:

Q. What is your name?
A. Ella Marshall.
Q. How old are you?
A. Thirty two.
Q. What is you post office address?
A. Muskogee.
Q. For whom do you now make application for enrollment?
A. A girl and boy; Robert and Lillie Marshall.
Q. How old is Robert?
A. Nine.
Q. How old is Lillie?
A. Going on six.
Q. Are you the mother of these children?
A. Yes sir.
Q. What is the name of their father?
A. Budkin Marshall.
Q. Is he a citizen of the Creek Nation?
A. Yes sir.
Q. Are you?
A. No sir.
Q. Do you claim to be a citizen of any Nation in Indian Territory?
A. No sir.
Q. To what town in the Creek Nation does Budkin Marshall belong?
A. I don't know *seh*.
Q. What is the name of his father?
A. William Marshall.

The records of the Commission examined and Budkin Marshall is identified on Creek Freedman card Field No. 1362, and his name is contained in the partial list of Creek Freedmen approved by the Secretary of the Interior, March 28, 1902, No. 4597.

Q. Are you the wife of Budkin Marshall?
A. I was when I had these children; I aint now.
Q. Were you legally married to him?
A. Yes sir.

Q. Where?
A. At Ft. Smith.
Q. Did you have a marriage license?
A. Yes sir.
Q. Were you married by an officer or a preacher?
A. Preacher.
Q. Have you the marriage license?
A. No sir.

The witness is advised that it will be necessary for her to file with the Commission the original marriage license or duly certified copy thereof.

Q. Was any money ever drawn in the Creek Nation for Robert Marshall this boy of yours?
A. I don't know only what I heard; they said there was.

76 The 1895 payroll of the Creek Nation examined and Budkin Marshall identified thereon at No. 1289; neither of the children herein applied for are identified on that roll, nor are they identified on the 1895 omitted roll.

Q. Why is it that you have waited so long to apply for the enrollment of these children?
A. I thought you could do that most any time; I didn't know just exactly what to do.
Q. Have you and Budkin Marshall separated?
A. When he went away to the pen I never lived with him any more.
Q. When was it he went to the pen?
A. It has been a good long time; its about two or three days before the girl came.
Q. Did you live with him until after the child, Lillie was born?
A. Yes sir.
Q. Was this child Robert born after you were married to him?
A. Yes.

Examination by Mr. Murphy:

Q. How long after you were married before the boy was born?
A. About two or three months.
Q. What year was that?
A. I don't know sir.
Q. Where is the girl?
A. She's home.
Q. In what year was she born?
A. I can't tell you that; I don't know neither one.
Q. You don't know whether she is six years old or not then?
A. Yes sir, she's around six.
Q. What year was it he went to the pen?
A. I don't know that; its been so long.
Q. Where did he go from?
A. Muskogee here; he did it up at Wagoner.

Q. Is he still in the pen?
A. No sir.
Q. Where is he now?
A. Over there on the river.
Q. Is he married again?
A. Yes sir, they say so.
Q. Was he ever divorced?
A. No sir.
Q. When did he marry again?
A. Its been about two or three years ago; he has got two children good sized now.
Q. Where is he living? In the Cherokee Nation?
A. No sir, over there in the Creek Nation on his place, between the two rivers.

Henry G. Hains being sworn on his oath states that as stenographer to the commission to the Five Civilized Tribes he reported the above case January 22, 1904, and that this is a full, true and correct transcript of his stenographic notes in same. Henry G. Hains.
Subscribed and sworn to before me this 22nd day of January, 1904. (Seal.) Edward Herrick, Notary Public.

77 Department of the Interior,
Commission to the Five Civilized Tribes,
Muskogee, I. T., Feb. 4, 1904.

In the Matter of the Application for the Enrollment of ROBERT and LILLIE MARSHALL as Creek Freedmen.

DOUGLAS PERRYMAN, being duly sworn, testified as follows:

Examination by the Commission:

Q. What is you- name?
A. Douglas Perryman.
Q. How old are you?
A. About 50 I guess.
Q. What is your postoffice address?
A. Muskogee.
Q. Do you know Ella Marshall?
A. Yes sir.
Q. Was she ever married to Budkin Marshall?
A. Yes sir.
Q. They lived together as man and wife, did they?
A. Yes sir.
Q. Did they have some children during the time they lived together as man and wife?
A. Yes sir.
Q. What was the name of those children?

A. One is Robert Marshall. Named after Robert Marshall across the river.

Q. What is the name of the girl?

A. I don't remember it but I know the children well.

Q. Were these two children born to them during the time they were living together as man and wife?

A. Yes sir.

Q. Budkin Marshall was sent to the penitentiary, was he?

A. Yes sir.

Q. Both of these children were born before he went to the penitentiary?

A. Yes sir.

Q. Now, you state what you told the mother of the children, if anything about applying to have them enrolled.

A. What I told the father too?

Q. Yes.

A. When the Dawes Commission first opened up I asked him did he enroll the children, and he said no.

Q. That's referring to these two children?

A. Yes sir; he said no; and I asked him why don't you and he said they had need of the marriage certificate, had to have it, and I said there is a way to get that; Well, he said you get him for me, and I written to Ft. Smith and in about a week received it, sent for him and turned it over; to him and told him to enroll the children. Then I went off into the Chickasaw Nation at the time I was working for the Commission and I came back and asked him did you enroll these children and he said yes, enrolled them and filed on his land; and sometime after that I seed the children roving around and I said "Bud, why don't you put those children in school?" and he said "I am." Sometime after I seed him down at the jail; the mother got into a little trouble and she had to go down there and here come the two little children, and I said: "Why don't you put those children in school?" and she said the father won't buy them clothes, and I said "You just get a guardian for those children and put them in school"; and then they just kept going on, and I said, "I will go with you before the Dawes Commission and we will appoint a guardian for those children"; and that's the reason they was before the Dawes Commission before I came.

Q. And you said Budkin told you he had filed for these children?

A. Yes sir, he told me I enrolled the children and filed for them; That's the reason I pushed him so hard to buy clothes for the children.

78 There is filed with the Commission a certified copy of marriage license issued by the County Clerk of Sebastin County, Arkansas, authorizing the marriage of Bud Marshall and Nellie Austin: Said license having been issued February 12, 1890. It appears that the parties therein named were duly joined in marriage February 13, 1890, as appears from the certificate thereto attached.

The same is made part of the record herein.

Henry G. Hains being sworn on his oath states that as stenographer to the Commission to the Five Civilized Tribes he reported the above case February 4, 1904, and that this is a full, true, and correct transcript of his stenographic notes in same. Henry G. Hains.

Subscribed and sworn to before me this 4th day of February, 1904. [Seal.] Charles H. Sawyer, Notary Public.

79 En. 423.

Muskogee, Indian Territory, March 18, 1904.

A. P. Murphy, Attorney for Creek Nation, Muskogee, Indian Territory.

SIR: There is herewith inclosed a copy of the decision of the Commission in the matter of the application for the enrollment of Robert and Lillie Marshall as Creek Freedmen.

You are hereby notified that the Creek Nation will be allowed fifteen days from the date hereof within which to protest against said decision, and if at the expiration of that time no such protest has been made, said Robert and Lillie Marshall will be regularly listed for enrollment as Creek freedmen. Respectfully, —— ——, Commissioner in Charge. H. G. H.-3-18-14.

80 423.

Department of the Interior,

Commission to the Five Civilized Tribes.

In the Matter of the Application for the Enrollment of ROBERT and LILLIE MARSHALL as Creek Freedmen.

DECISION.

The record in this case shows that on January 22, 1904, Ella Marshall appeared before the Commission at Muskogee, Indian Territory, and made application for the enrollment of her two minor children, Robert and Lillie Marshall, as Creek Freedmen. Further proceedings were had February 4, 1904.

The evidence shows that said Robert and Lillie Marshall are the minor children of Budkin Marshall whose name is contained in the partial list of Creek Freedmen approved by the Secretary of the Interior, March 28, 1902, number 4597, and Ella Marshall, a citizen of the United States; that said minor children were born prior to July 1, 1900, and were living at the date of the application herein.

It is, therefore, the opinion of the Commission that Robert Marshall and Lillie Marshall should be enrolled as Creek Freedmen in accordance with the provisions of the acts of Congress, June 28, 1898 (30 Stats., 495) and March 1, 1901, 31 Stats., 861), and it is so ordered. Commission to the Five Civilized Tribes. —— ——,

Chairman. —— ——, Commissioner. —— ——, Commissioner. —— ——, Commissioner. Dated at Muskogee, Indian Territory, this —— —, ——.

81 5450.

Application No. —.

Department of the Interior,

Commission to the Five Civilized Tribes,

Creek Nation.

To the Clerk of the Land Office at Muskogee:

This is to certify that the name of Lillie Marshall age 6 ap-

Names.	Relationship to person first named.	Age.
.....	.....	.....

pears on Creek Freedman Card, Field No. 1929 of record in the office of the Commission to the Five Civilized Tribes. Muskogee, Indian Territory, Jul. 2-1904 A. D. 190-. —— ——, Commissioner in Charge. J. J. B.

82 (Blank 731.)

Creek Freedman Roll.

Number.	Name.	Age.	Sex.	Blood.	Card No.
5450	Marshall, Lillie	6	F.	.....	1767

83 Blank 744.

Department of the Interior,

United States Indian Service.

Office of

Superintendent for the Five Civilized Tribes,

Muskogee, Oklahoma.

This is to certify that I am the officer having the custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and the copies of the following described papers, attached hereto, are true and correct copies of the entire enrollment record on file in this office in connection with the application of Lillie Marshall Roll No. 5450, for enrollment as Freedman of the Creek Nation:

Creek Freedmen Census Card No. 1767. Testimony dated 1/22/1904.
Testimony date 2/4/1904. Office Letter dated 3/18/1904.
Decision of the Commission. Citizenship Certificate.
Approved Roll as to No. 5450. Gabe E. Parker, Superintendent, by Andre E. Gardenhire, Clerk in Charge Creek Records. Date Oct. 28, 1915. 191-. B. F. Mc.

84 Mr. Brown: Plaintiff now offers in evidence his Exhibit Two, the same being a deed to the plaintiff, from Robert Marshall. I think that is admitted in the pleadings.
The Court: All right. It may be received in evidence if there is no objection.
At this time Mr. Brown reads to the Court plaintiff's Exhibit Two, the same being in words and figures as follows, to wit:

85–86 **PLAINTIFF'S EXHIBIT "TWO."**

[Omitted; printed p. 18.]

87 J. P. FLANAGAN, a witness, produced, sworn and examined on behalf of the plaintiff, testified in his own behalf as follows, to wit:

Direct examination by Mr. Brown:

Q. State your name to the Court.
A. J. P. Flanagan.
Q. You are the plaintiff in this action?
A. Yes sir.
Q. Mr. Flanagan, are you acquainted with the allotment of Robert Marshall, the same being the lands in controversy in this action?
A. Acquainted with what?
Q. The lands, the allotment of Robert Marshall.
A. Yes sir.
Q. When did you purchase that allotment?
Mr. Biddison: We object to that. The deed is the best evidence.
Q. There has been a deed introduced in evidence, the same being marked plaintiff's Exhibit Number Two; you are the J. P. Flanagan named as grantee in that deed?
A. Yes sir.
Q. When you purchased this property what, if anything, did you do towards taking possession of it?
A. I put a man on the property shortly after purchasing it and had him stay there for a matter of four or five months.
Q. What did you do since that time?
A. I paid the taxes on the land.
88 Q. For what years have you paid the taxes?
A. The year of 1910 up to the present time.
Q. How did it happen you paid the taxes prior to the date you took the deed?

Mr. Biddison: Objected to as incompetent, irrelevant and immaterial.

The Court: In what way is it material?

Mr. Brown: Well it is not material.

Q. I hand you here some papers and will ask you to state what those are (handing papers to witness).

A. (Witness examines papers.) These are tax receipts from Creek County, Sapulpa

Q. Covering what land?

A. The Robert Marshall land in 18-12.

Q. Where did you get those receipts?

Mr. Biddison: Objected to as irrelevant and immaterial.

The Court: Sustained.

Q. Are these the receipts you received upon payment of the taxes?

A. Yes sir.

Mr. Brown: We offer all these receipts in evidence and will ask the Reporter to mark the same as Plaintiff's Exhibit Three.

The Last above mentioned papers are now handed to the Reporter and by him marked Plaintiff's Exhibit Three and returned to Mr. Brown.

89 Mr. Biddison: Objected to as incumbering the record, incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Biddison: Exception.

Plaintiff's Exhibit Three is now read to the Court, the same being in words and figures as follows, to wit:

90 Please Examine Description on this receipt and Report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., 6-17, 1916. No. 916.

Received of J. P. Flanagan the sum of $16.96 for first half —, last half —, all of the following Taxes for the year 19—:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.													
S. W.—S. W.	40	29	18	12	37	800	1.36	6.80	4.80	2.32	....	.... 1.68	15.08

Sapulpa.
Twp.
103.
Bruce Ferret.

Total 16.96

Taxes for the year 1911.

J. E. BRUIN, *County Treasurer,*
By G. B. STECK, *Deputy.*

91 Please Examine Description on this receipt and Report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., 6-17, 1916. No. 917.

Received of J. P. Flanagan the sum or $12.34 for first half —, last half —, all of the following Taxes for the year 19—:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'- value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.													
S. W.—S. W. Sapulpa. Twp. 104. Bruce Ferret.	40	29	18	12	37	800	.88	6.80	1.76	1.68	....	....	1.12
												1.22	
Total													12.34

Taxes for the year 1910.

J. E. BRUIN, *County Treasurer*,
By G. B. STECK, *Deputy*.

92 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., 6-17, 191-. No. 914.

Received of J. P. Flanagan the sum of $13.58 for first half —, last half —, all of the following Taxes for the year 19—:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —. S. W.—S. W.	40	29	18	12	37	800	2.40	4.40	3.60	Ferret 1.84	....	.... 1.34	12.2-
Bruce Ferret.													
Total													13.58

J. E. BRUIN, *County Treasurer,*
By G. B. STECK, *Deputy.*

Taxes for the year 1913.

93 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., 6-17, 1916. No. 919.

Received of J. P. Flanagan the sum of $51.57 for first half —, last half —, all of the following Taxes for the year 19—:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.													
N. E.—S. E.	40	30	18	12	37	1200	4.20	7.80	6.42	....	....	....	
S. E.—S. E.	40	30	18	12	37	1200	4.20	7.80	6.42	....	....	....	18.42
106. Sap. Twp.												14.73	18.42
Total							8.40	15.60	12.84				51.57

Taxes for the year 1913.

J. E. BRUIN, *County Treasurer,*
By G. B. STECK, *Deputy.*

Exhibit 3 to Testimony of J. P. Flanagan. 45

94 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., 6-17, 1916. No. 915.

Received of J. P. Flanagan the sum of $12.61 for first half —, last half —, all of the following Taxes for the year 19—:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equalization value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.										Ferret			
S. W.—S. W. 40 Sapulpa Twp. Bruce Ferret.		29	18	12	37	800	1.52	4.00	4.16	1.68	....	....	11.36
												1.25	
Total													12.61

Taxes for the year 1912.

J. E. BRUIN, *County Treasurer,*
By G. B. STECK, *Deputy.*

95 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., 6-17, 1916. No. 9403.

Received of P. J. Flanagan the sum of $11.10 for first half —, last half —, all of the following Taxes for the year 1914:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.													
S. W.—S. W. 40		29	18	12	37	800	.88	5.60	2.00	Ferret 1.52	....	....	10.00
Sap. Twp. Bruce Ferret.												1.10	
Total													11.10

Taxes for the year 1914.

J. E. BRUIN, *County Treasurer,*
By G. B. STECK, *Deputy.*

Exhibit 3 to Testimony of J. P. Flanagan.

96 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., 6-19, 1916. No. 9404.

Received of O. D. Hennage the sum of $42.99 for first half —, last half —, all of the following Taxes for the year 1914:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.													
N.W.—S.W.	40	29	18	12	37	800	1.04	6.56	2.37	20	50	2.00	9.9-
N. E.—S. E.	40	30	18	12	37	1200	1.56	9.84	3.56	20	50	3.00	14.96
S. E.—S. E.	40	30	18	12	37	1200	1.56	9.84	3.56	20	50	3.00	14.96
Total							4.16	26.24	9.49	60	1.50	11.00	42.99

Taxes for the year 1914.

J. E. BRUIN, *County Treasurer*,
By C. C. COLLINS, *Deputy*.

97 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., 6-17, 1916. No. 918.

Received of J. P. Flanagan the sum of $31.41 for first half —, last half —, all of the following Taxes for the year 19—:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.													
N. E.—S. E.	40	30	18	12	37	1000	2.25	5.80	6.10	....	....	....	14.15
N. E.—S. E.	40	30	18	12	37	1000	2.25	5.80	6.10	....	....	....	14.15
Sap. Twp.							4.50					3.11	
Total								11.60	12.20				31.41

Taxes for the year 1912.

J. E. BRUIN, *County Treasurer*,
By G. E. STECK, *Deputy*.

Exhibit 3 to Testimony of J. P. Flanagan. 49

98

	11.10
	13.58
	12.61
	16.96
	12.34
	60.91
	.25
	60.91
	.25
	11.42
	.25
	200.58*

99

ORIGINAL TAX SALE CERTIFICATE.

Bid in for County. Sale of 1915. Tax of 1914. No. 26544.

STATE OF OKLAHOMA,
Creek County, ss:

I, the undersigned, County Treasurer of said county, do hereby certify that at a public sale of real property for delinquent taxes held at the office of the County Treasurer, at the county seat of said county, on the 1st day of November, A. D. 1915, the following described property, situated in said county and State of Oklahoma, to wit:

Description.	Sec.	Twp.	Rnge.	No. acres.	Amount. Dols. cts.	Lot.	Block.	City.	Amount. Dols. cts.
S.E.-S.E.	30	18	12	40	17.12	..	..	..	....

was offered for sale at public auction and there being no other bidders, could not be sold for taxes and charges thereon; it was therefore bid off for said county for the sum of seventeen and 12/100 Dollars, being the full amount of taxes, costs and charges thereon for the year 1914.

In witness whereof, I have hereunto set my hand this 1st day of November, A. D. 1915. J. E. Bruin, County Treasurer.

Exhibit of above payments:

Amt. of Tax of 1914	$14.96
" of penalty	3.20
" " Tax of 1913	18.42
" " penalty	7.37
" " Tax of 1912	14.15
" " penalty	1.56
" " Tax of 19--	.25
" " penalty	.50
Treasurer's Fee	.50
Total	$60.91

I, J. E. Bruin, County Treasurer of said county, do further certify that O. D. Hennage on this 13 day of June 1916 has paid into the county treasury of said county for said property, the sum of $60.91 Dollars, a sum equal to the cost of redemption on the same at this time; and said purchaser will be entitled to a deed for said property on the 1 day of November, 1917, unless the same shall have been redeemed by law.

In consideration of the payment of Sixty & 19/100 Dollars into the county Treasury of the above named county, and by virtue of authority in me vested by law, I, the undersigned county treasurer of said county, do hereby assign and transfer the above certificate and all the interest of said county in and to said property to O. D. Hennage.

Given under my hand and official seal this 19 day of June, 1916. (Seal of County Treasurer.) J. E. Bruin, County Treasurer, by C. C. Collins, Deputy.

100 Last Foregoing Tax Sale Certificate Endorsed: "Certificate of Purchase.

ASSIGNMENT.

Sep. 15, 1916 for value received, I, the within named purchaser, do hereby assign and transfer the within certificate, together with all my title and interests and rights under the same to J. P. Flanagan. O. D. Hennage."

ACKNOWLEDGMENT.

STATE OF OKLAHOMA,
County of Creek, ss:

Before me, Enos R. Pickett, a Notary Public, in and for the above named County and State, on this the 19 day of June, A. D. 1916, personally appeared J. E. Bruin to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written. Enos R. Pickett, Notary Public. (Notary Seal.) My commission expires the 15th day of May, 1918.

101 **ORIGINAL TAX SALE CERTIFICATE.**

Bid in for County. Sale of 1915. Tax of 1914. No. 26541.

STATE OF OKLAHOMA,
Creek County, ss:

I, the undersigned, County Treasurer of said county, do hereby certify that at a public sale of real property for delinquent taxes held at the office of the County Treasurer, at the county seat of said county, on the 1st day of November, A. D. 1915, the following

described property, situated in said county and State of Oklahoma, to wit:

Description.	Sec.	Twp.	Rnge.	No. acres.	Amount. Dols. cts.	Lot.	Block.	City.	Amount. Dols. cts.
N.W.-S.W.	29	18	12	40	11.71	..	..	..	....

was offered for sale at public auction and there being no other bidders, could not be sold for taxes and charges thereon; it was therefore bid off for said county for the sum of Eleven and 71/100 Dollars, being the full amount of taxes, costs and charges thereon for the year 1914.

In witness whereof, I have hereunto set my hand this 1st day of November, A. D. 1915. J. E. Bruin, County Treasurer.

Exhibit of above payments:

Amt. of Tax of 1914	$9.97
" of penalty	2.20
" " Tax of 19--	....
" " penalty	....
" " Tax of 19--	....
" " penalty	.25
" " Tax of 19--	.50
" " Penalty	.50
Treasurer's Fee	....
Total	$11.42

I, J. E. Bruin, County Treasurer of said county, do further certify that O. D. Hennage on this 17 day of June 1916 has paid into the county treasury of said county for said property, the sum of $11.42 Dollars, a sum equal to the cost of redemption on the same at this time; and said purchaser will be entitled to a deed for said property on the 1 day of November, 1917, unless the same shall have been redemmed by law.

In consideration of the payment of Eleven & 42/100 Dollars into the county Treasury of the above named county, and by virtue of authority in me vested by law, I, the undersigned county treasurer of said county, do hereby assign and transfer the above cer-
102 tificate and all the interest of said county in and to said property to O. D. Hennage.

Given under my hand and official seal this 17 day of June, 1916. J. E. Bruin, County Treasurer, by C. C. Collins, Deputy.

Endorsements. State Examiner and Inspector Form No. 16. (Seal of County Treasurer.) Certificate of Purchase.

ASSIGNMENT.

Sept. 15, 1916. For value received, I, the within named purchaser, do hereby assign and transfer the within certificate, together with

all my title and interests and rights under the same, to J. P. Flanagan. O. D. Hennage.

ACKNOWLEDGMENT.

STATE OF OKLAHOMA,
County of Creek, ss:

Before me, Enos R. Pickett, a Notary Public, in and for the above named County and State, on this the 19 day of June, A. D. 1916, personally appeared J. E. Bruin to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written. Enos R. Pickett, Notary Public. (Notary Seal.) My commission expires the 15th day of May, 1918.

103 **ORIGINAL TAX SALE CERTIFICATE.**

Bid in for County. Sale of 1915. Tax of 1914. No. 26543.

STATE OF OKLAHOMA,
Creek County, ss:

I, the undersigned, County Treasurer of said county, do hereby certify that at a public sale of real property for delinquent taxes held at the office of the County Treasurer, at the county seat of said county, on the 1st day of November, A. D. 1915, the following described property, situated in said county and State of Oklahoma, to wit:

Description.	Sec.	Twp.	Rnge.	No. acres.	Amount. Dols. cts.	Lot.	Block.	City.	Amount. Dols. cts.
N.E.-S.E.	30	18	12	40	17.20	..	..	..	....

was offered for sale at public auction and there being no other bidders, could not be sold for taxes and charges thereon; it was therefore bid off for said county for the sum of Seventeen and 20/100 Dollars, being the full amount of taxes, costs and charges thereon for the year 1914.

In witness whereof, I have hereunto set my hand this 1st day of November, A. D. 1915. J. E. Bruin, County Treasurer.

Exhibit of above payments:

Amt. of Tax of 1914	$14.96
" of penalty	3.20
" " Tax of 1913	18.42
" " penalty	7.37
" " Tax of 1912	14.15
" " penalty	1.56
" " Tax of 19--	.25
" " penalty	.50
Treasurer's Fee	.50
Total	$61.91

I, J. E. Bruin, County Treasurer of said county, do further certify that O. D. Hennage on this 19 day of June, 1916 has paid into the county treasury of said county for said property, the sum of $60.91 Dollars, a sum equal to the cost of redemption on the same at this time; and said purchaser will be entitled to a deed for said property on the 1 day of November, 1917, unless the same shall have been redeemed by law.

In consideration of the payment of Sixty and 91/100 Dollars into the county Treasury of the above named county, and by virtue of authority in me vested by law, I, the undersigned county treasurer of said county, do hereby assign and transfer the above certificate and all the interest of said county in and to said property to O. D. Hennage.

Given under my hand and official seal this 19 day of June, 1916. J. E. Bruin, County Treasurer, by C. C. Collins, Deputy. (Seal of County Treasurer.)

104 Last Foregoing Tax Sale Certificate Endorsed: "State Examiner and Inspector. Form No. 16. Certificate of Purchase.

ASSIGNMENT.

Sept. 15, 1916. For value received, I, the within named purchaser, do hereby assign and transfer the within certificate, together with all my title and interests and rights under the same, to J. P. Flanagan. O. D. Hennage."

ACKNOWLEDGMENT.

STATE OF OKLAHOMA,
County of Creek, ss:

Before me, Enos R. Picket, a Notary Public, in and for the above named County and State, on this the 19 day of June, A. D. 1916, personally appeared J. E. Bruin to me known to be the identical person who executed the within and foregoing instrument, and acknowl-

edged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written. Enos R. Pickett, Notary Public. (Notary Seal.) My commission expires the 15th day of May, 1918.

105

133.39*
44.51
48.44
30.66
27.22

284.22*

106 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., Oct. 16, 1918. No. 12611.

Received of J. P. Flanagan the sum of $133.39 for first half —, last half —, all of the following **Taxes for** the year 1917:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Adver-tising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.											Assessor		
N. W.—S. W & S. W.—S. W.	80	29	18	12	37	1760	4.40	20.04	21.82	20	1.00	....	47.26
E. 1—2 S. E.	80	30	18	12	"	2640	6.60	30.06	32.74	20	....	....	69.40
												119	
R. Marshall Land Sapulpa Twp.						4400							
Total ..							11.00	50.10	54.56	40	1.00	....	$133.39

E. R. PICKETT, *County Treasurer.*
By RULS HYDE, *Deputy.*

Taxes for the year 1917.

107 **TAX SALE REDEMPTION CERTIFICATE.**

State Examiner and Inspector. Form 19. Original. No. of Sale 1060. No. 300. Year 1916.

STATE OF OKLAHOMA,
Creek County, ss:

I do hereby certify, That the following Real Estate, viz: NE-SE of 30-18-12 Sapulpa Twp. sold on the 5 day of Nov. 1917, by the County Treasurer of said County, to Levy Bros. County for the sum of Thirty-six and 97/100 Dollars for Delinquent Taxes for the year 1916, has this day been redeemed by J. P. Flanagan he having paid the above amount, together with legal interest and charges thereon, amounting in the aggregate to the sum of — Dollars.

	Tax 1916.	Tax 19—.	Tax 19—.	Tax 19—.	Tax 19—.	Tax 19—.	Total Amount.	Remarks.
Amount of Tax..	36.97							
Interest	5.54							
County Treasurer's Fees	1.00							$44.51
County Clerk's Fees	1.00							
	$44.51							
Totals.....	$44.51							

In testimony whereof, I have hereunto set my hand this 16 day of Oct., 1918. E. R. Pickett, County Treasurer.

STATE OF OKLAHOMA,
Creek County, ss:

I do hereby certify, That the above described Real Estate has on this 16 day of Oct., 1918, been redeemed for the Delinquent Tax of A. D. 1916, and the same entered on Sale Book in my office.

In testimony whereof, I hereunto set my hand and affix my official seal the day above mentioned. E. R. Pickett, County Treasurer. By Eula Hydge, Deputy. Attest: Gus L. Corey, County Clerk, By E. S. Hyde, Deputy.

108 **TAX SALE REDEMPTION CERTIFICATE.**

State Examiner and Inspector. Form 19. Original. No. of Sale 1061. No. 301. Year 1916.

STATE OF OKLAHOMA,
Creek County, ss:

I do hereby certify, That the following Real Estate, viz: SE-SE of 30-18-12 Sapulpa Twp. sold on the 5 day of Nov. 1917, by the

County Treasurer of said County, to Levy Bros. County for the sum of Fourty and 39/100 Dollars for Delinquent Taxes for the year 1916, has this day been redeemed by J. P. Flanagan he having paid the above amount, together with legal interest and charges thereon, amounting in the aggregate to the sum of — Dollars.

	Tax 1916.	Tax 19—.	Tax 19—.	Tax 19—.	Tax 19—.	Tax 19—.	Total Amount.	Remarks.
Amount of Tax..	40.39							
Interest	6.05							
County Treasurer's Fees	1.00							$48.44
County Clerk's Fees	1.00							
Totals.....$48.44								

In testimony whereof, I have hereunto set my hand this 16 day of Oct., 1918. E. R. Pickett, County Treasurer.

STATE OF OKLAHOMA,
Creek County, ss:

I do hereby certify, That the above described Real Estate has on this 16 day of Oct., 1918, been redeemed for the Delinquent Tax of A. D. 1916, and the same entered on Sale Book in my office.

In testimony whereof, I hereunto set my hand and affix my official seal the day above mentioned. E. R. Pickett, County Treasurer, By Eula Hydge, Deputy. Attest: Gus L. Corey, County Clerk, By E. S. Hyde, Deputy.

109 **TAX SALE REDEMPTION CERTIFICATE.**

State Examiner and Inspector. Form 19. Original. No. of Sale 1058. No. 299. Year 1916.

STATE OF OKLAHOMA,
Creek County, ss:

I do hereby certify, That the following Real Estate, viz: NW-SW of 29-18-12 Sapulpa Twp. sold on the 5 day of Nov., 1917, by the County Treasurer of said County, to Levy Bros. County for the sum of Twenty-four and 93/100 Dollars for Delinquent Taxes for the year 1916, has this day been redeemed by J. P. Flanagan he having paid the above amount, together with legal interest and charges thereon, amounting in the aggregate to the sum of — Dollars.

	Tax 1916.	Tax 19—.	Tax 19—.	Tax 19—.	Tax 19—.	Tax 19—.	Total Amount.	Remarks.
Amount of Tax..	24.93							
Interest	3.73							
County Treasurer's Fees	1.00							
County Clerk's Fees	1.00							
Totals.....	$30.66							

In testimony whereof, I have hereunto set my hand this 16 day of Oct., 1918. E. R. Pickett, County Treasurer.

STATE OF OKLAHOMA,
Creek County, ss:

I do hereby certify, That the above described Real Estate has on this 16 day of Oct., 1918, been redeemed for the Delinquent Tax of A. D. 1916, and the same entered on Sale Book in my office.

In testimony whereof, I hereunto set my hand and affix my official seal the day above mentioned. E. R. Pickett, County Treasurer, By Eula Hyde, Deputy. Attest: Gus L. Corey, County Clerk, By E. S. Hyde, Deputy.

110 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., Oct. 16, 1918. No. 12782,

Received of J. P. Flanagan the sum of $27.22 for first half —, last half —, all of the following Taxes for the year 1914:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.													
S.W.—S.W. R. Marshall Land. Sapulpa Twp.	40	29	18	12	37	880	1.76	11.09	8.09	....	....	.... 6.28	20.94
Total													27.22

Taxes for the year 1914.

E. R. PICKETT, *County Treasurer.*
By EULA HYDE, *Deputy.*

111 Please Examine Description on this receipt and report if Incorrect.

County Treasurer's Office, Creek County.

Sapulpa, Okla., April 7, 1919. No. 9748.

Received of J. P. Flanagan the sum of $141.76 for first half —, last half —, all of the following Taxes for the year 1918:

Original.

Description.	Acres.	Section or lot.	Township.	Range or blk.	School dist.	State equali'n value.	State tax.	Consolidated county, township, or municipal tax.	School dist. tax.	Special taxes. Advertising.	Special taxes. Treas. fees.	Penalty.	Total tax.
Personal tax, —.													
W. 1—2 S.W.	80	29	18	12	37	1760	4.40	21.16	31.14	....	....	....	56.70
E. 1—2 S. E.	80	30	18	12	37	2640	6.60	31.73	46.73	....	....	....	85.06
Sapulpa Twp.													
Total							11.00	52.89	77.87	....	....	....	141.76

Taxes for the year 1918.
R. Marshall, 160.

E. R. PICKETT, *County Treasurer.*
By M. JENKINS, *Deputy.*

Exhibit 3 to Testimony of J. P. Flanagan. 61

112 By Mr. Brown:

Q. Mr. Flanagan, did you ever lease these lands in question to the defendants?
A. No sir.

Mr. Biddison: Objected to as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Biddison: Exception.

A. No sir.
Q. Did you ever authorize them or any of them to enter upon possession of the land or remain thereon after you purchased it?

Mr. Biddison: Objected to — incompetent, irrelevant and immaterial and calling for a conclusion of the witness. The question of what constitutes authority to develop these lands is a question of law quite as much as a question of fact.
Judge Hardy: That is perhaps true but whether he gave them any affirmative permission he might state.
The Court: What was the question?

(Question read by the Reporter.)

The Court: Sustained.
Judge Hardy: Exception.

By Mr. Brown:

Q. I believe you stated you made them no oil and gas lease?
A. I didn't make any, no.
Q. And did you ever execute any other conveyance to the defendants or either of them?
113 A. No sir.
Q. Did you ever make any demand upon the defendants or either of them that they cease operating the lands for oil and gas?
A. Yes sir.
Q. In what way was that demand made?
A. By registered mail.
Q. Do you know the circumstances under which it was delivered?
A. Know whether it was delivered?
A. Yes.
A. As I recall, it was mailed and a registry receipt returned for the delivery of said notice.
Q. By whom was that, if you know, by whom was that notice mailed or given?
A. By my attorney.
Q. In this case?
A. In this case.
Q. Myself?
A. Yourself.

Q. And did you ever have any other business transaction pertaining to the operation of this land—I withdraw the question. That is all. You may cross-examine.

Cross-examination by Mr. Davidson:

Q. When did you enter into possession of the lands, Mr. Flanagan?
A. I don't recall the exact date, Mr. Davidson; it was in 1916 however.
Q. How long was it after you took the deed?
A. I don't recollect that.
Q. When you took possession who did you find; did you find anybody else in possession of the land?
114 A. I suspect that would depend on just what possession meant in this instance. The Okla Oil Company or the Tidal was operating the property.
Q. For oil and gas?
A. Yes sir.
Q. At the time you took possession?
A. That is my understanding.
Q. You know whether they were in possession operating the property for oil and gas at the time you took the deed?
A. Do I know they were in possession?
Q. Yes, at the time you took the deed.
A. No sir, I don't know.
Q. How long after the deed was it that you took possession?
A. I am not sure.
Q. Soon after you took the deed?
A. I just took it for granted, I don't know as a matter of fact, except that they tendered me royalties from the farm. I assume they were in operation.
Q. Did you take more than one deed from Robert Marshall?
A. Yes sir.
Q. When did you take the first one?
A. January 22, 1916.
Q. You claimed the right to royalties from the Tidal Oil Company, didn't you, after you took the first deed?
A. Beg pardon?
Q. Didn't you claim the right to receive the royalties from the Tidal Oil Company after you took your first deed?

Judge Hardy: The plaintiff objected as incompetent, irrelevant and immaterial.

Mr. Davidson: No, it is material on cross-examination.
115 Mr. Davidson: They asked him if he ever made a lease to the Tidal Oil Company. Going to the question of the Tidal Oil Company's authority along that line, operating for oil and gas. Now we want to know, we want to inquire if he recognized the authority.

Mr. Biddison: And what is the extent of his possession that he claims he took.

Judge Hardy; He said he took possession while they were operating. They haven't shown any right whatever, so far as this record now stands, they are interlopers and trespassers.

Mr. Biddison: Now we are inquiring of his right. If he put a man on there, they have a right to show it, that he put a man on there but recognized our right.

Judge Hardy: To begin with, it is not proper cross-examination; and secondly, conceding it is proper cross-examination, I make the further point that they have made no showing that they are in possession of these premises for any purpose at all. As this record now stands, this allottee was a minor and his lands were entirely restricted by minority; and just a mere act on his part would not give any validity to any claim they may have had prior to that time.

The Court: Sustained.

Mr. Biddison; Exception.

By Mr. Davidson:

Q. Have you been on the land personally, yourself?

116 A. Yes sir.

Q. When?

A. At various times in the past three years.

Q. You were on the land then before you commenced this suit? wasn't you?

A. I think so.

Q. Wasn't the Tidal Oil Company in possession of that land at the time you filed this suit?

A. The only way I know of them being in possession of that land is the fact that they sent me checks for the royalty interest.

Q. And you took them?

A. Sir?

Q. And you accepted them?

A. You paid the checks that they paid me, under a bond that I gave the company, to indemnify them, as I recall.

Q. You never repaid them?

A. I never repaid them.

Q. You acceped the money and never tendered it back?

Mr. Brown: I move that that be stricken out as not responsive.

The Witness: I didn't know what it was until it was answered and the Court sustained an objection.

The Court: Sustained. Answer stricken.

Q. You still insist you don't know whether the Tidal Oil Company was in possession of that land?

A. Yes, sir.

Q. You still insist you don't know?

A. I don't know, no sir; I don't know now. As I say that depends on what——

117 Q. Didn't you make demand on the Tidal Oil Company for possession of this land before you brought the suit, written demand by your attorney?

A. Yes sir.

Q. And yet you say you don't know and never did know whether they were in possession or not?

A. Well it would just constitute what possession might be. I may be ignorant on that score. I believed them to be in possesssion.

Q. You knew in fact they were in possession and demanded that they give you possession?

Judge Hardy: If the Court please, we will admit the Tidal Oil Company were on the premises taking oil and gas therefrom under a pretended oil and gas lease, and we knew that fact at the time of purchase. We admit that they were operating the premises, removing the oil and gas therefrom at the time suit was brought and at the time demand for possession was made.

Mr. Davidson: And that they have remained in possession during all that time from the date of purchase until this hour?

Judge Hardy: Well we haven't recovered possession yet. That is the purpose of this suit.

Mr. Davidson: And that they have been in possession all that time?

Judge Hardy: I don't know whether they have or not. Some one has, and the purpose is to regain possession from whom we claim are trespassers.

118 Mr. Davidson: I want to have it clear to the court that the Tidal Oil Company and nobody else, the defendant in this suit has been in active possession of the lands since Flanagan bought it.

Judge Hardy: Our admission goes to this extent only, that they have been operating the premises and removing oil and gas therefrom, but we don't admit that they have been in possession of the surface as distinguished from the right to remove oil and gas.

Mr. Davidson: That they are in possession so far as the right to develop, so far as the fact of developing oil and gas is concerned, and that they have equipment on the land for that purpose.

Judge Hardy: I think we will admit that they have been since this suit was brought.

Mr. Davidson: I just wanted to get that clear, that is all.

Redirect examination.

By Mr. Brown:

Q. Mr. Flanagan, do you know whether or not this land is now producing oil and gas?

A. Yes sir.

Q. Was it at the time you purchased it?

A. Yes sir.

Judge Hardy: If the Court please, I would like to inquire whether, in an action of this kind, the Court considers the question of accounting along with the other issues in the case?

119 The Court: Not ordinarily.

Judge Hardy: The question now will be the question of title; and if we prevail, the other issues can be determined at some other time.

Mr. Brown: That is all, Mr. Flanagan.

Mr. Davidson: That is all.

(Witness Excused.)

120 GEORGE T. BROWN, a witness, produced, sworn and examined on behalf of the plaintiff, testified as follows, to wit:

Direct examination.

By Judge Hardy:

Q. Please state your name to the Court.

A. George T. Brown.

Q. Mr. Brown, are you one of the attorneys for the plaintiff in this case?

A. Yes sir.

Q. Do you know the circumstance of notice being sent by you to the defendant Tidal Oil Company?

A. Yes sir.

Judge Hardy: I hand the Reporter an instrument and will ask him to mark it as Plaintiff's Exhibit Four for the purpose of identification.

The last above mentioned paper is now handed to the Reporter and by him marked as requested and returned to Judge Hardy.

Q. I now hand you the instrument just marked by the Reporter and will ask you to state whether you ever saw that instrument before (handing paper to witness).

A. Yes sir.

Judge Hardy: Plaintiff's Exhibit Number Four is tendered counsel for defendants for examination and inspection. (Handing paper to counsel.)

Q. What was done with that exhibit Four, Mr. Brown?

A. It was mailed to the defendants and each of them, a copy was.

121 Q. By what character of mail?

A. By registered mail, with proper postage prepaid.

Q. How was it addressed?

A. One notice was addressed to the Tidal Oil Company and the other to E. M. Arnold and one to Mrs. Eleanor Arnold.

Judge Hardy: I hand the Court Reporter an instrument and will ask that he mark the same plaintiff's exhibit Five.

The last above mentioned paper is now handed to the Reporter and by him marked as requested and returned to Judge Hardy.

Mr. Davidson: We are not questioning the notice.
Judge Hardy: You will admit the notice was received?
Mr. Davidson: So far as we are concerned.
Mr. Biddison: I am not admitting it so far as the Arnolds are concerned.
Mr. Brown: Let the record show the Tidal Oil Company admits receiving the notice which is marked plaintiff's Exhibit Number Four and that no objection is made to the introduction of it in evidence.
Mr. Davidson: No sir.
Mr. Brown: And that so far as the defendant Tidal Oil Company is concerned, plaintiff's Exhibit Four may be admitted in evidence.

122 By Judge Hardy:

Q. Will you state whether this notice or a similar notice was mailed to any other person than the Tidal Oil Company?
A. To each of the defendants in this case.
Q. Give the names of the defendants to whom it was mailed?
A. E. M. and Eleanor Arnold.
Q. By what character of mail was notice to the other defendants given?
A. By registered mail with postage prepaid and demand for return registry receipt noted on the registered letter. I am not positive whether one was mailed to Mrs. Eleanor Arnold or not but there was one to the defendant E. M. Arnold; and this is the registry receipt which was returned to my office in due course of mail, from the registered letter which was sent to Mr. E. M. Arnold. (Presenting a card.)

Judge Hardy: I now hand this to the Reporter and will ask that he mark the same plaintiff's Exhibit Six.
The last above mentioned paper is now handed to the Reporter and by him marked as requested and returned to Judge Hardy.
Judge Hardy: And Exhibit Six is now tendered counsel for defendant Arnold for examination and inspection. (Handing card to Mr. Biddison.)
Judge Hardy: Plaintiff offers in evidence Exhibit Number Six of the plaintiff, which is the registry return receipt of the notice mailed to E. M. Arnold. Any objection?
Mr. Biddison: Objected to as incompetent, irrelevant and immaterial and no sufficient foundation laid.
123 The Court: Overruled.
Mr. Biddison: Exception.

(Plaintiff's Exhibit Six can not be found among the Reporter's files.)

Judge Hardy: That is all. Cross-examine.
Mr. Biddison: No cross-examination.

(Witness excused.)

124 Judge Hardy: Plaintiff now offers in evidence Plaintiff's Exhibit Number Four, being a copy of the notice mailed to the defendant E. M. Arnold.

Mr. Biddison: Objected to so far as the defendants Arnold and Arnold are concerned as incompetent, irrelevant and immaterial and no sufficient foundation laid, and no demand for the production of the original has been made or proven.

The Court: Do you represent both of the Arnolds, Mr. Biddison?

Mr. Biddison: I represent the Arnolds.

The Court: Both of them?

Mr. Biddison: Both of them and them only.

The Court: Sustained as to Mrs. Eleanor Arnold. Overruled as to the other defendant, E. M. Arnold.

Judge Hardy: Give us an exception so far as Mrs. Arnold is concerned.

Mr. Biddison: Give us an exception so far as the Court overruled our objection.

Mr. Brown now reads Plaintiff's Exhibit Four to the Court, the same being in words and figures as follows, to wit:

PLAINTIFF'S EXHIBIT FOUR.

"On behalf of J. P. Flanagan, of Tulsa, Oklahoma, the owner in fee of the West Half of the Southwest Quarter of Section 29, and the East Half of the Southeast Quarter of Section 30, Township 18 North, Range 12 East, situate in Creek County, Oklahoma,
125 commonly known and designated as the Robert Marshall allotment, I am authorized and instructed to make of you the following demands, to wit:

That all of the oil, gas and minerals mined, extracted and removed by you from the above described lands, and converted to your own use, from and since the 13th day of October, A. D. 1916, be forthwith turned over and delivered to the said J. P. Flanagan, he having become vested with the fee simple title in and to said lands on said date last above named, and said oil and minerals so removed from said lands from and since that date having been unlawfully and wrongfully removed and converted by you.

Further demand is hereby made that you forthwith discontinue and cease trespassing upon the property belonging to the said J. P. Flanagan as above described, and that you make due accounting to him for all oil, gas and other minerals so removed and converted by you from and since said 13th day of October, 1916.

Dated this 18th day of January, 1917. J. P. Flanagan, by Geo. T. Brown, His attorney.

The original of which this is a copy, was mailed by registered mail on the 18th of January, 1917, to the Tidal Oil Co., successor to the Okla. Oil Co., Tulsa, and E. M. Arnold, Tulsa, Oklahoma. Minnie T. Morse.

126-128 Mr. Brown: If your Honor please, we desire to offer in evidence the patents, allotment deeds of Robert Marshall, copies of which are attached to the petition and admitted by the pleadings. I take it they are properly admissible in evidence, being part of the pleadings and not denied under oath.

Mr. Biddison: They are not admissible in evidence at all.

The Court: Overruled.

Mr. Brown: Let the record show, then, that the patents which are attached to the petition are admitted in evidence, the same being Exhibits numbered seven and eight respectively.

PLAINTIFF'S EXHIBIT SEVEN.

[Omitted, printed p. 14.]

129–130 **PLAINTIFF'S EXHIBIT 8.**

[Omitted, printed p. 16.]

131 Mr. Brown: Plaintiff now rests on this angle of the case.

Mr. Davidson: The defendant Tidal Oil Company demurs to the evidence adduced by plaintiff, on the ground that the same fails to prove a cause of action or that would entitle them to the relief prayed for in the petition.

The Court: Overruled.

Mr. Biddison: Just a moment. I would like to be heard on that; Come now the defendants Eleanor Arnold and E. M. Arnold and demur to the evidence offered on behalf of the plaintiff for the reason that the same is insufficient to prove the cause of action alleged in the petition or otherwise.

Judge Hardy: If the Court please, so far as E. M. Arnold is concerned, we have no objection to him being discharged.

The Court: Demurrer overruled as to the Tidal Oil Company and Eleanor Arnold. Proceed. Demurrer as to E. M. Arnold sustained.

Mr. Biddison: Exception to the overruling of the demurrer as to Eleanor Arnold.

Mr. Brown: At this time the plaintiff moves for judgment against E. M. Arnold, quieting the title in the plaintiff as against said defendant.

The Court: Overruled.

Mr. Brown: Exception.

Mr. Davidson: Exception by Tidal Oil Company to the overruling of its demurrer to the plaintiff's evidence.

132 Thereupon The defendants Eleanor Arnold and The Tidal Oil Company introduced in support of the contentions on their part the following evidence herein, to wit:

E. M. ARNOLD, a witness, produced, sworn and examined on behalf of the defendants, testified as follows, to wit:

Direct examination by Mr. Biddison:

Q. Your name is E. M. Arnold?
A. Yes sir.
Judge Hardy: If the Court please, the plaintiff objects to the introduction of any evidence by the defendants under the answer of the defendant Tidal Oil Company and the defendant Eleanor Arnold, on the ground that the facts alleged do not state a defense to the plaintiff's cause of action; and that if all the facts alleged be taken as true, the plaintiff is entitled to judgment. If the Court desires to hear the evidence——
The Court: I would like to hear the evidence.
Judge Hardy: Of course in the event the Court should hold against us we want the record to show an exception to the introduction of all this evidence.
Q. You were originally one of the defendants in this lawsuit?
A. Yes sir.
Q. Do you know W. W. Hyams?
A. Yes sir.
Q. Do you know S. C. Lawson?
A. Yes sir.
133 Q. Do you know the allottee of the lands in controversy here, Robert Marshall?
A. Yes sir.
Q. I wish you would state to the Court whether you and W. W. Hyams and S. C. Lawson whom I have mentioned, were defendants in a suit brought in the District Court of Creek County, being suit number 1319, entitled Robert Marshall, a minor and infant by R. B. Thompson, next friend, and B. B. Barnett guardian of said Robert Marshall, a minor and incompetent, plaintiff, vs. E. M. Arnold, W. W. Hyams and S. C. Lawson?
A. Yes sir.
Q. That Robert Marshall who was plaintiff in that suit is the same Robert Marshall who is the allottee of the lands in controversy here?
A. Yes sir.
Q. Do you recollect now just when that suit was brought?
A. No, I don't just recollect it. It appears to me it was some time in 1909.
Q. 1909?
A. If I remember right.
Q. Do you remember who was Judge of this court at the time; was it Judge Barnum or do you remember?
A. Well I remember him very well; I can not just call his name.
Q. Barnum?
A. Barnum, Judge Barnum.

Q. And the W. W. Hyams and the S. C. Lawson mentioned were also defendants with you in that suit?
A. Yes sir.

(Witness Excused.)

134 Mr. Biddison: Now if the Court please, the defendants offer in evidence the original journal entry of judgment in the case of Robert Marshall, a minor and infant, by R. B. Thompson, his next friend and B. B. Burnett guardian of said Robert Marshall, vs. E. M. Arnold, W. W. Hyams and S. C. Lawson, being cause number 1319, in the District Court of Creek County, Oklahoma, as their Exhibit "A."

Judge Hardy: Plaintiff objects to the introduction——

Mr. Biddison: Wait a minute—reserving the right to withdraw the original and substitute a copy.

Judge Hardy: The plaintiff objects to the introduction of the judgment on the ground that it is incompetent, irrelevant and immaterial, and for the specific reason that it shows upon its face that the instrument upon which the Court undertook to quiet title in the defendants in that case, was executed by Robert Marshall at a time when he was a minor and was incapable of alienating his lands other than in a regular probate proceeding in the County Court having jurisdiction of the subject matter. We do not make any point that that is not the original judgment or anything of that kind.

The Court: Sustained.

Mr. Biddison: Exception.

135 Mr. Davidson: Now if the Court please, what I was going to suggest is this: that inasmuch as our theory of the case—in order to sustain our theory, the same objection will go to all these, I would suggest that the Court might reserve his ruling to the introduction of the instruments until the argument.

The Court: Very well, I will do that.

Judge Hardy: That is all right with us, but I want to note my objection specifically so it will be in the record. The Court may reserve his ruling. The Reporter might note the fact that the Court reserves his ruling.

The Court: I presume he has it.

Defendant's Exhibit "A" is in words and figures as follows, to wit:

136 **DEFENDANTS' EXHIBIT "A."**

In the District Court in and fore Creek County, State of Oklahoma.

ROBERT MARSHALL, a Minor and Infant, by R. B. THOMPSON, His Next Friend, and by R. B. Burnett, Guardian of said Robert Marshall, a Minor and Incompetent, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Journal Entry.

Now, to wit: on this 16th day of May, 1910, the same being one of the regular judicial days of the regular term of said court, this cause comes on for trial upon the amended petition of B. B. Burnett, as guardian, and upon the answer of the defendants thereto, and the reply of the plaintiff to said answer, and there appears for the plaintiff, Hughes & Miller, and Frank P. Smith, attorneys, and for the defendant, Biddison & Campbell, their attorneys, and all the parties appearing in person, and the court hears the evidence in the case, and the plaintiff introduces his evidence, and rests, and the defendants introduce their evidence, and rest, and the cause is argued by counsel for both plaintiff and defendants, and thereupon the court takes the cause under advisement. The plaintiff desires that the cause be held open for the purpose of making tender into court under offer in the pleadings, and for that purpose the cause is con-

137 tinued until 9 a. m. of May 17, 1910, and that at 9 o'clock a. m. of said May 17th, 1910, the cause come further on for hearing; the court extends the time until 1.30 o'clock p. m. of said day for said plaintiff to make tender into court pursuant to offer in his amended petition, and thereafter, at 1.30 o'clock p. m. of said day, the parties appearing by their said attorneys, and the plaintiff brings into open court the sum of $931.50, but declines to tender same into court, but offers to pay same to the attorney for the defendants, defendants not being present in court, as full satisfaction of the amount due defendants, and defendants' attorney declines to accept same, and states that he has no authority in any manner to compromise or settle the case, or to accept or to reject tenders on behalf of his clients, and thereupon the court finds all the issues in favor of the defendant-, and against the plaintiff and finds:

That at the time of the execution of the various instruments complained of in plaintiff's petition, to wit:

The assignment of royalties, a deed to the East half of the Southeast Quarter of Section 30, and the Northwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, I. B. M., in Creek County, Oklahoma, and of the execution of an option contract, dated 27th day of October, 1909, granting to defendants the option for a term of twelve months to purchase

Southwest Quarter of Southwest Quarter of Section 29, Township 18 North, Range Twelve (12) East, in said county and state,

138 and at the time of the execution of an oil and gas mining lease described in plaintiff's petition, the said plaintiff, Robert Marshall, was competent to transact said business; that said transactions sere, and each and all of them, free from fraud, deceit or undue influence, and are each and all supported by fair, valid and sufficient consideration.

Wherefore, it is considered, ordered and adjudged by the court; that the plaintiff take nothing by his action; that the title of the defendants in and to

East Half of the Southeast Quarter of Section 30, and to Northwest Quarter of the Southwest Quarter, of Section 29, all in township 18 North, of Range Twelve, East of the Indian Base and Meridian, and in Creek County, Oklahoma,

be forever q ed against any and all claims of the plaintiff, Robert Marshall, herein; and that said agreement of sale of royalties complained of in plaintiff's petition, and the option contract complained of in plaintiff's petition, be in all matters and things confirmed, and are binding and valid upon the parties thereto, and that the oil and gas mining lease for the term of five years, beginning April 13, 1915, upon

Southwest Quarter of Southwest Quarter of Section 29, Township 18 North, Range 12 East, in Creek County, Oklahoma, I. B. M.

complained of in said petition be and is declared valid and binding, and that the defendants recover their costs herein. W. L. Barnum, Judge.

Endorsements: No. 1319. Received and Filed this 21 of May, 1910. J. B. Summers, District Clerk, by —— ——, Deputy. Biddison and Campbell.

139 Mr. Davidson: Now the defendants offer in evidence an oil and gas lease executed on May 31, 1910, by E. M. Arnold, W. W. Hyams and S. C. Lawson, to the Arkansas Oil Company, covering the Southwest Quarter of the Southwest quarter of Section Twenty-nine and the Northeast quarter of the southeast quarter of Section Thirty, Township Eighteen North, Range Twelve East in Creek County, Oklahoma, duly recorded in the office of the Register of Deeds of Creek County, Oklahoma, as their Exhibit "B."

Judge Hardy: Plaintiff objects to the introduction of Defendants' Exhibit "B" for the reason that the same is incompetent, irrelevant and immaterial and was executed by the defendant and by one who has no right to convey any interest in restricted lands of Creek Indian Freedmen.

The Court: Ruling reserved.

Defendants' Exhibit "B" is in words and figures as follows, to wit:

140-143 **DEFENDANTS' EXHIBIT "B."**

[Omitted, Printed p. 33.]

144 Mr. Davidson: Now I haven't possession of the original lease to the Orient, Is there any question as to that?

Judge Hardy: No sir. We will not require the production of the original.

Mr. Davidson: All right, then; defendants offer in evidence an oil and gas lease executed April 1, 1910 by E. M. Arnold, W. W. Hyams and S. C. Lawson to the Orient Oil & Gas Company, covering the Northwest quarter of the Southwest Quarter of Section Twenty-nine, and the Southeast Quarter of the Southeast Quarter of Section Thirty, Township Eighteen North, Range Twelve East, duly recorded in the office of the Register of Deeds of Creek County, Oklahoma, as Defendants' Exhibit "C".

Judge Hardy: Plaintiff makes the same objection to the introduction of this instrument as to the one immediately preceding.

The Court: I was just thinking if the instruments are all of the same character that the record might show the general objection made.

Judge Hardy: Our objection will be of the same character; and if there is some specific objection to any particular instrument, we will make it.

The Court: Ruling reserved.

Defendants' Exhibit "C" is in words and figures as follows, to wit:

145 **DEFENDANTS' EXHIBIT "C."**

14849.

Oil and Gas Lease.

E. M. Arnold to Orient Oil & Gas Co. & C. E. Suppes.

This agreement, Made and entered into this 31st day of May A. D. 1910 by and between E. M. Arnold, W. W. Hyams and S. C. Lawson of Tulsa, Oklahoma, parties of the first part, and Orient Oil & Gas Company and C. E. Suppes of Mounds, Oklahoma, party of the second part;

Witnesseth: That the said parties of the first part, for and in consideration of the covenants and agreements hereinafter inserted and the sum of One Dollars in hand and hereby acknowledged, have granted, demised and let unto the party of the second part, its successors and assigns, for the purposes and exclusive right of drilling and operating for and procuring oil and gas, all of the following described property, to wit:

Southeast Quarter of the Southeast Quarter of Section 30, and the Northwest Quarter of the Southwest Quarter of Section 29, all in Twp. Eighteen (18) Range Twelve (12)

situated at Creek County, Oklahoma, to any extent the said party of the second part may deem advisable, together with the right to lay, erect, and maintain all necessary pipe and pipe lines, tanks, structures, rods, cable and all other fixtures and machinery used in drilling for, pumping, preserving, storing and transporting the product on said premises, The party of the second part shall further have the right of using sufficient water from the premises for
146 operating purposes, and if necessary the right to drill for it on said premises.

The party of the second part to have and to hold the premises for and during a term of fifteen years from date hereof, and as much longer as oil or gas is found or produced in paying quantities thereon.

In consideration of the said grant and demise, the party of the second part agrees to deliver to the parties of the first part one-eighth, of the oil realized from the premises, in tanks at the well without cost. If gas is found in any well or wells on said premises, the parties of the first part is to have, upon demand, sufficient gas for domestic purposes free of charge; the remainder, with all the gas from the oil wells, to go to the party of the second part. If the party of the second part shall market any gas from any well producing gas only, then the parties of the first part shall receive therefor at the rate of One Hundred and fifty dollars per annum for all gas so marketed or sold.

The party of the second part agrees to locate wells so as not to interfere any more than is reasonably necessary with the houses on the premises.

The party of the second part further agrees that in case no well is drilled for oil or gas within one year from the date hereof, all rights and obligations secured under this grant and demise shall cease upon notice in writing being served by parties of the first part, unless the party of the second part shall elect from year to year to continue this grant and demise in force as to any or all portions of the premises by paying in advance an ann-al rental of $1.00 per acre for all of said lease, or such portion thereof as the party of the second part may designate, until a well is drilled, provided that, upon the
147 completion of said well, the above provided for rentals shall cease. All payments of said rentals to be made at the First National Bank, Tulsa, Okla. to the credit of the part- of the first part.

The party of the second part shall have the right to remove any and all fixtures placed upon said premises.

The party of the second part shall have the right to discharge any incumbrance upon said premises and shall have a lien thereon for the amount so paid, together with all costs and expenses incurred.

It is hereby further agreed that the party of the second part shall have the right at any time to surrender and terminate this grant and demise by serving written notice upon the parties of the first part of such intention, after which all payments or liabilities to accrue shall cease and determine.

All rights and obligations under this grant and demise shall extend to and be binding upon the heirs, executors or administrators, successors and assigns of the parties hereto.

In witness whereof, The parties have hereunto set their hands and seals the day and year first above written. E. M. Arnold. [Seal.] W. W. Hyams. [Seal.] S. C. Lawson. [Seal.] Orient Oil & Gas Company, By F. R. Letcher, Pres. O. T. Letcher, Sec. Witnesses to signature: Harry Campbell. Bates B. Burnett.

148 STATE OF OKLAHOMA,
Creek County, ss:

Before me, a H. A. Cunningham, Notary Public in and for said county and State, on this 31st day of May, 1910, personally appeared E. M. Arnold, W. W. Hyams and S. C. Lawson to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof I have hereunto set my hand and official seal the day and year last above written. H. A. Cunningham, Notary Public. [Seal.] Commission expires May 9, 1914. My Commission expires —— — 191-.

STATE OF OKLAHOMA,
County of Creek:

This instrument was filed in my office for record on the 1 day of June A. D. 1910, at 2 o'clock P. M. and duly recorded in Book 50, at page 202. Lafe Speer, Register of Deeds.

149 Mr. Davidson: The defendants now offer in evidence an assignment of oil and gas lease dated May 31, 1910, from E. M. Arnold W. W. Hyams and S. C. Lawson, and the Arkansas Oil & Gas Company, to the Okla Oil Company, which, it is admitted, is the same corporation as the defendant Tidal Oil Company. The said Assignment being of record in the office of the County Clerk of Creek County; the date of the record being August 10, 1915, Book 117, at page 205, as Defendants' Exhibit "D".

Judge Hardy: We make the same general objection.

The Court: Ruling reserved.

Defendants' Exhibit "D" is in words and figures as follows to wit:

150 **DEFENDANTS' EXHIBIT "D."**

Assignment of Oil and Gas Lease.

Whereas, on the 31st day of May, 1910, a certain oil and gas mining lease was entered into by and between E. M. Arnold, W. W. Hyams, and S. C. Lawson, lessors, and Arkansas Oil Company, of Tulsa, Oklahoma, lessee, covering the following described land situate in Creek County, Oklahoma, to wit:

Southwest Quarter of Southwest Quarter of Section Twenty-nine (29), and Northeast Quarter of Southeast Quarter of Section 30, all in Township Eighteen (18) North, Range Twelve (12) East; said lease having been recorded in the office of the Register of Deeds for Creek County, Oklahoma, on June 1st, 1910, in Book 50 at page 201.

Whereas, the lease, and all rights thereunder or incident thereto, are owned by Arkansas Oil Company.

Now, Therefore, For and in consideration of One Dollar (and other good and valuable considerations) the receipt of which is hereby acknowledged, the undersigned, the present owner of the said lease and all rights thereunder, or incident thereto, do hereby bargain, sell, transfer, assign and convey all the right, title and interest of the original lessee and present owner in and to the said lease and rights thereunder, together with all personal property, wells, production and rquipment used or obtained in connection therewith to Okla Oil Company, a corporation, of Tulsa, Oklahoma, its successors and assigns.

And for the same consideration, the undersigned for itself, its successors and assigns, does covenant with the said assignee, its successors or assigns, that it is the lawful owner of the lease and rights and interests thereunder, and of the personal property thereon or used in connection therewith, and is in the lawful possession of the premises thereunder; that the undersigned has good right and authority to sell and convey the same, and that said rights, interests and property are free and clear from all liens and incumbrances, and that all rentals and royalties due and payable thereunder have been paid.

In witness whereof, the undersigned owner and assignor have signed and sealed this instrument this 1st day of August, 1915. Arkansas Oil Company, By J. A. Hull, President. Attest: W. H. Kiser, Secretary.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, the undersigned, a Notary Public, in and for said county and state, on this 9th day of August, 1915, personally appeared J. A. Hull to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation for the uses and purposes therein set forth. ——. Short, Notary Public. (Seal) My Commissioner expires: June 2, 1917.

Endorsements: No. —. Arkansas Oil Company to Okla Oil Company. Dated August 1st, 1915. State of Oklahoma, County of Creek. This Instrument was Filed in my office for record Aug. 10, 1915, 8 o'clock A. M. and duly recorded in Book 117

at Page 205. Gus L. Corey, County Clerk. Return to Okla Oil Company, Box 1088, Tulsa, Okla.

153 Mr. Davidson: Defendants now offer in evidence an assignment of lease made on May 31, 1910, between E. M. Arnold, W. W. Hyams and S. C. Lawson, as lessors, and the Orient Oil & Gas Company and C. E. Suppes of Tulsa, Oklahoma, as lessees, to the defendant Okla Oil Company, now the Tidal Oil Company, the same appearing of record under date of July 17, 1915, in the office of the County Clerk of Creek County, Oklahoma, in Book 116, at page 131, as their Exhibit "E".

Mr. Brown: Same objection.

The Court: Ruling Reserved.

Defendants' Exhibit "E" is in words and figures as follows, to wit:

154 **DEFENDANTS' EXHIBIT "E."**

Assignment of Oil and Gas Lease.

Whereas, on the 31st day of May, 1910, a certain oil and gas mining lease was entered into by and between E. M. Arnold, W. W. Hyams and S. C. Lawson, lessors, and Orient Oil & Gas Company of Mounds, Oklahoma, and C. E. Suppes of Tulsa, Oklahoma, lessees, covering the following described land situated in Creek County, Oklahoma, to wit:

The Southeast Quarter of the Southwest Quarter of Section Thirty (30); and Northwest Quarter of Southwest Quarter of Section twenty-nine (29) all in Township Eighteen (18) North, Range Twelve (12) East, containing eighty (80) acres, more or less; said lease having been recorded in the office of the Register of Deeds for Creek County, Oklahoma, in Book 50 at Page 202.

Whereas, the said lease and all rights thereunder or incident thereto are owned by Orient Oil & Gas Company, an undivided one-half interest; C. E. Suppes an undivided three-eighths interest, and R. L. Davidson, an undivided one-eighth interest.

Now, therefore, For and in consideration of One Dollar (and other good and valuable considerations) the receipt of which is hereby acknowledged, the undersigned, the present owners, of the said lease and all rights thereunder or incident thereto do hereby bargain, sell, transfer, assign, and convey all the right, title and interest of the original lessees and present owners in and to the said lease and rights thereunder, together with all personal property, wells, production and equipment used or obtained in connection therewith to

155 Okla Oil Company, a corporation, of Tulsa, Oklahoma, its successors and assigns.

And for the same consideration, the undersigned for themselves, their heirs, successors and representatives do covenant with the said assignee, its successors or assigns, that they are the lawful owners of the said lease and rights and interests thereunder and of the personal property thereon or used in connection therewith, and are

in the lawful possession of the premises thereunder; that the undersigned have good right and authority to sell and convey the same, and that said rights, interests and property are free and clear from all liens and incumbrances, and that all rentals and royalties due and payable thereunder have been paid.

In witness whereof, The undersigned owners and assignors have signed and sealed this instrument this 12th day of July, 1915. Orient Oil & Gas Company, By F. R. Letcher, President. (Seal) V. S. Scott, Secretary. C. E. Suppes. R. L. Davidson.

156 STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, the undersigned, a Notary Public, in and for said County and State on this 12th day of July, 1915, personally appeared F. R. Letcher to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth. R. I. Short, Notary Public. (Seal.) My commission expires June 2, 1917.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this 12th day of July, 1915, personally appeared C. E. Suppes, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth. R. I. Short, Notary Public. (Seal.) My commission expires June 2, 1917.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, the undersigned, a Notary Public, in and for said County and State, on this 30 day of June, 1915, personally appeared R. L. Davidson to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth. Ethel K. Shilders, Notary Public. (Seal.) My commission expires Oct. 13, 1918.

157 Endorsements: Index 19156. Assignment—Oil & Gas Lease. Orient Oil & Gas Co. and C. E. Suppes to Okla. Oil Company. Dated July 12th, 1915. State of Oklahoma, County of Creek.

This instrument was filed in my office for record on Jul. 17, 1915 at 8 o'clock A. M., and duly recorded in Book 116 at Page 131. Gus L. Corey, County Clerk, By C. K. Maddox, Deputy. Return to: Okla. Oil Company, Box 1088, Tulsa, Okla.

158 Mr. Davidson: The defendants now offer in evidence the petition of James Harris as guardian of Robert Marshall, filed in the County Court of Creek County, Oklahoma, on July 5, 1913, for the approval of a certain agreement entered into between said James Harris as guardian of Robert Marshall, with E. M. Arnold, which contract and agreement with E. M. Arnold is attached to and made a part of the guardian's petition, and also in connection therewith an order of the County Court of Creek County, Oklahoma, filed July 5, 1913, and entered on the Probate Minutes, Book nine, page 63 of said court, approving and confirming the contract entered into between James Harris and the said E. M. Arnold, as Defendants' Exhibit "F."

Judge Hardy: I understood the objection would go to each one without being repeated in connection with each offer.

The Court: Ruling reserved.

Defendants' Exhibit "F" is in words and figures as follows, to wit:

159 **DEFENDANTS' EXHIBIT "F."**

In the County Court, Creek County, Okla.

No. 854.

In the Matter of the Guardianship of ROBERT MARSHALL, Minor; JAMES HARRIS, Guardian.

Petition.

Comes James Harris guardian of Robert Marshall, minor, and incompetent and shows to the court that he has entered into a compromise with E. M. Arnold with reference to the litigation that has been pending in the District Court of Creek County, Oklahoma, relative to the estate of said Robert Marshall, a true copy of said agreement and compromise is hereto attached as part of this petition marked "Ex. A."

Your petitioner believes and would show to the court that under all the conditions and circumstances currounding said estate, that it is to the best interest of said minor to perfect said settlement and compromise, and to that end your *your* petitioner prays the court to approve and confirm the same. James Harris, Guardian Robt. Marshall minor and incompetent. (Seal.)

160–162 **EXHIBIT A TO EXHIBIT F.**

[Omitted; printed p. 37.]

163 Endorsements: No. 854. In the Matter of the Guardianship of Robert Marshall, minor James Harris, Guardian. Petition to Approve Compromise Settlement. County Court, Creek Co., Okla. Filed July 5th, 1913. Clyde M. Robinson, Clerk, County Court, By —— ——, Deputy. Burke & Harrison.

164 **DEFENDANTS' EXHIBIT "F."**

In the County Court, Creek County, Oklahoma.

No. 854.

In the Matter of the Guardianship of ROBERT MARSHALL, Minor; JAMES HARRIS, Guardian.

Order Confirming Settlement.

On this day come on to be heard the petition of James Harris, guardian of Robert Marshall, minor and incompetent to have approved an agreement, settlement and compromise of all matters pertaining to the estate of the said Robert Marshall heretofore pending in the District Court of Creek County, Okla. wherein said estate was involved in litigation between E. M. Arnold and others and said minor by a next friend, said compromise is in words and figures as follows to wit:

(Clerk here copy said compromise.)

And the court having heard proof pertaining thereto, and being fully advised in the premises, is of the opinion that it is to the best interest of said minor that said settlement and compromise be made, and tenor thereof.

It is therefore ordered, adjudged and decreed that said settlement and compromise be, and the same is in all things thereto pertaining approved, affirmed and ratified by this court and the said guardian is directed and authorized to make and accept the same. This 5th day of July, 1913. Warren H. Brown, County Judge.

165 Endorsements: No. 854. In the Matter of the Guardianship of Robert Marshall, Minor; James Harris, Guard. Order Approving Settlement and Compromise. County Court, Creek County, Okla. Filed July 5th, 1913. Clyde M. Robinson, Clerk County Court. —— ——, Deputy. Rec. Pro. Min. Book 9, Page 630.

166 Mr. Davidson: Defendants now offer in evidence petition in the matter of the guardianship of Robert Marshall, a minor, by his guardian, Vance Likely, filed in the County Court of Creek County, Oklahoma, August 24th, 1915, asking for the approval of a certain agreement entered into by the said Vance Likely as guardian of Robert Marshall, to the Okla Oil Company, and in connection therewith an order of the County Court of Creek County, Oklahoma, in the same case, dated August 24, 1915, ratifying and confirming the agreement between the Okla Oil Company and Vance Likely, filed in the County Court of Creek County, Oklahoma, August 24, 1915, and appearing of record in Probate Minutes of said court, in Book 15, at page 260 thereof, as the Defendants' Exhibit "G."

The Court: Ruling reserved.

Defendants' Exhibit "G" is in words and figures as follows, to wit:

167 **DEFENDANTS' EXHIBIT "G."**

In the County Court of Creek County, State of Oklahoma.

Probate No. —.

In the Matter of the Guardianship of ROBERT MARSHALL, a Minor and an Incompetent; VANCE LIKELY, Guardian.

Petition.

Now comes Vance Likely, the duly appointed, acting and qualified guardian of the estate of said minor, Robert Marshall, who also has been adjudged an incompetent by this Court and your petitioner duly appointed as his guardian, and states unto the Court:

That his said ward, Robert Marshall, is the owner in fee simple of the following described land situated in Creek County, Oklahoma, to wit:

The Southwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East.

That heretofore on May 31st, 1910, E. M. Arnold, W. W. Hyams and S. C. Lawson, then claiming the ownership of said land, executed an oil and gas lease covering said land and other land to Arkansas Oil Company, a corporation; said lease being for the term of fifteen (15) years; that said lease was made as a substitute for and in lieu of a certain Departmental oil and gas lease covering said land, executed May 18th, 1907, by Robert Austin as guardian of said Robert Marshall, a minor to Arkansas Oil Company; said lease having been approved by the Secretary of the Interior on June 12, 1908, and which lease, by its terms, expired on April 13th, 1915.

168 That said Arkansas Oil Company entered into possession of said land, under said Departmental lease, and developed same for oil and gas and discovered oil in paying quantities and has produced oil therefrom, and has assigned all its right, title and interest in and to said lease and said subsequent lease and wells, and property to Okla Oil Company of Tulsa, Oklahoma, which Company is now producing oil therefrom.

Your petitioner further states that there may be some question as to the authority of said E. M. Arnold, W. W. Hyams and S. C. Lawson to have made said lease of May 31st, 1910, in so far as it relates to the land above described, and he has entered into a written agreement with Okla. Oil Company on behalf of his ward, Robert Marshall, ratifying and confirming said lease, dated May 31st, 1910, in respect to said forty acres of land above described, and recognizing said lease to be a valid and binding contract and conveyance in the same manner and with the same force and effect as if executed and delivered by the regularly appointed, qualified and

acting guardian of said Robert Marshall to said Arkansas Oil Company, and said instrument of ratification is presented herewith for approval.

Your petitioner states that said land has been demonstrated to be of value for oil and gas purposes and for several years oil, in paying quantities, has been produced from said land by said Arkansas Oil Company and Okla Oil Company, and the ward's share, to wit ¼ of the royalty of one-eighth (⅛) of all oil produced and marketed from said land (which royalty is reserved in said lease) has given to said minor a substantial income, and will continue to
169 afford an income so long as said land shall be operated, and your petitioner believes that Okla Oil Company is an experienced and skillful operator, and that it will be to the best interests of his ward for said instrument of ratification to be approved by the Court.

Wherefore, your petitioner prays that the Court make an order approving and confirming said instrument, entered into on the 24th day of August 1915, by your petitioner in favor of Okla Oil Company, ratifying and confirming said lease above referred to dated May 31st, 1910.

Dated this 24th day of August, 1915. Vance Likely, Petitioner.

STATE OF OKLAHOMA,
County of Creek, ss:

Vance Likely, Guardian of Robert Marshall, a minor, being duly sworn, upon his oath states: That he has read the within and foregoing petition; that he knows the contents thereof, and that the matters and things set forth therein are true. Vance Likely.

Sworn to and subscribed to before me this 24th day of Aug. 1915. Chestina K. Maddox, Notary Public. My commission expires: Oct. 24, 1917.

170 Endorsements: No. 854. In the matter of the guardianship of Robert Marshall, a minor and an incompetent, Vance Likely, Guardian. Petition. Received and Filed in County Court, Creek County, Aug. 24, 1915. W. R. Casteel, Court Clerk, Creek County, by Ray McElhenny, Deputy.

171 **DEFENDANTS' EXHIBIT "G."**

In the County Court of Creek County, State of Oklahoma.

Probate No. —.

In the Matter of the Guardianship of ROBERT MARSHALL, a Minor and an —; VANCE LIKELY, Guardian.

Order.

Now, on this 24th day of August, 1915, comes on for hearing the petition of Vance Likely, guardian herein, asking for the approval

of a certain instrument ratifying and confirming a lease heretofore executed by the guardian of the ward herein in favor of Arkansas Oil Company, and assigned by Arkansas Oil Company to Okla Oil Company, and the Court having examined the said petition; heard the statements of counsel and the guardian having examined the evidence, and having examined the instrument of ratifiaction presented herewith for approval and being fully advised in the premises:

It is ordered and adjudged that the agreement entered into on the 24th day of August, 1915, by and between Vance Likely, guardian of Robert Marshall, a minor and an incompetent, with Okla Oil Company ratifying and confirming a certain oil and gas lease heretofore entered into by and between the guardian of said lease having been assigned by Arkansas Oil Company, under date of May 31st, 1910; said lease having been assigned by Arkansas Oil Company to Okla Oil Company, be and hereby is approved by this Court. Vick O. Decker, Judge of the County Court of Creek County, Oklahoma.

172 Endorsements: No. 854. In the matter of the guardianship of Robert Marshall, a minor and an incompetent, Vance Likely, Guardian. Order. Received and Filed in County Court, Creek County, Aug. 24, 1915. W. R. Casteel, Court Clerk Creek County, by Ray McElHenny, Deputy. Book 13, Page 260.

173 Mr. Davidson: The defendants now offer in evidence the original journal entry in cause number 1319 in the District Court of Creek County, Oklahoma, entitled Robert Marshall, a minor and infant, by R. B. Thompson, his next friend, and by R. B. Burnett, guardian of said Robert Marshall, a minor and incompetent vs. defendants E. M. Arnold, W. W. Hyams and S. C. Lawson; being a journal entry denying the plaintiff's petition to vacate and set aside the judgment heretofore offered in evidence, as Defendants' Exhibit "H."

The Court: Ruling reserved.

Defendants' Exhibit "H" is in words and figures as follows, to wit:

174 **DEFENDANTS' EXHIBIT "H."**

In the District Court of Creek County, State of Oklahoma.

No. —.

ROBERT MARSHALL, a Minor and Infant, by R. B. THOMPSON, His Next Friend, and by H. B. Burnett, Guardian of said Robert Marshall, a Minor and Incompetent, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Journal Entry.

Now, on this 30 day of June, 1913, this cause coming on to be heard on the petition of the plaintiff above named to have the judg-

ment heretofore rendered in this cause in favor of the defendants and against the plaintiff vacated and set aside, the plaintiff being present by his attorneys, Burke & Harrison, and the defendants being present by their attorneys, Biddison & Campbell, and the Court after hearing the evidence and being fully advised in the premises, finds:

That said motion and petition should be denied.

It is therefore considered, ordered and adjudged, That the petition to vacate and set aside the judgment in this cause be denied. Wade S. Stanfield, Judge. Burke & Harrison, Attys. for Plff.

175 Endorsements: No. 1319. In the District Court of Creek County, Oklahoma. Robert Marshall, Plaintiff, vs. E. M. Arnold et al., Defendant-. Journal Entry. Received and Filed on Jun. 30, 1913. W. R. Casteel, District Clerk. —— ——, Deputy. Biddison & Campbell, Attorneys for Defendants. Rec. Journal Civil, Book 7 Page 179.

176 Mr. Davidson: Defendants also offer in evidence original orders in the same cause, No. 1319 in the District Court of Creek County, State of Oklahoma, dated respectively August 13, 1910, November 11, 1910 and December 10, 1910 extending the time for making and serving case made for the Supreme Court of the State, as their exhibits "I," "J" and "K" respectively.

The Court: Ruling reserved.

Defendants' Exhibits "I," "J" and "K" respectively are in words and figures as follows, to wit:

177 **DEFENDANTS' EXHIBIT "I."**

State of Oklahoma, County of Creek, in the District Court.

No. —.

ROBERT MARSHALL, a Minor, by BATES B. BURNETT, His Guardian, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Order Extending Time to Make and Serve Case Made.

Now, on this 13th day of August, 1910, it appearing to the undersigned, Judge of the District Court of Creek County, that the time heretofore given to the plaintiff to make and serve case made in the above entitled cause, and for an appeal to the Supreme Court, which said time expires on the 19th day of August, 1910, has been insufficient in which to make and serve said case made.

Therefore, I, the undersigned, Judge of the District Court of Creek County, for good cause shown, do hereby extend the time for making

and serving said case made for a period of sixty days from the said 19th day of August, 1910, defendants to have ten days after said service to suggest amendments to said case made, the same to be settled upon five days' notice thereafter in writing by either party. W. L. Barnum, Judge.

178 Endorsements: No. 1319. Robert Marshall, a minor; Bates B. Burnett, guardian, Plaintiffs, vs. E. M. Arnold, W. W. Hyams, and S. C. Lawson, Defendants. Order Extending Time to Make and Serve Case Made. Recorded. Received and Filed This 13- of Aug. 1910. J. B. Summers, District Clerk, by Mabel Gallagher, Deputy. Hughes & Miller, Attorneys.

179 **DEFENDANTS' EXHIBIT "J."**

In the District Court of Creek County, Oklahoma.

No. 1319.

BATES B. BURNETT, Guardian of Robert Marshall, a Minor and Incompetent Person, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Order Extending Time to Make and Serve Case Made.

On this 11th day of November, A. D. 1910, it appearing to the undersigned Judge of said court, upon the application of the plaintiff, that the time heretofore granted herein within which said plaintiff could make and serve case made on appeal to the Supreme Court in said cause, which said time expires on the 17th day of November, 1910, has been insufficient,——

It is, for good cause shown, hereby, Ordered by the Court that a further extension of thirty days from said November 17th, 1910 be granted to said plaintiff to make and serve case made on appeal to the Supreme Court in said cause.

Witness my hand this 11th day of November, 1910. W. L. Barnum, Judge of the District Court.

180 Endorsements: No. 1319. Bates B. Burnett, Guardian of Robert Marshall, a minor and incompetent person, Plaintiff, vs. E. M. Arnold, W. W. Hyams and S. C. Lawson, Defendants. Order Extending Time to Make and Serve Case Made. Received and Filed This 11- of Nov. 1910. J. B. Summers, District Clerk, by —— ——, Deputy. Recorded — 448, — 60.

181 **DEFENDANTS' EXHIBIT "K."**

In the District Court of Creek County, State of Oklahoma.

ROBERT MARSHALL, an Incompetent, by BATES B. BURNETT, Guardian, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Order Extending the Time to Make and Serve Case Made.

On this 10th day of December A. D. 1910, it appearing to the undersigned Judge of the above named court, upon the application of the plaintiff that the time heretofore granted herein within which said plaintiff could make and serve case-made for appeal of this cause to the Supreme Court, will expire on December 17th, 1910, and that such time is insufficient for the purpose: It is, for good cause shown ordered that for good cause shown a further extension of thirty (30) days from the expiration of said period be granted and allowed to the plaintiff to make and serve such case made; the defendants to have ten days from the service of such case made to suggest amendments in writing thereto; and said case made to be settled, signed and certified upon five days' notice in writing by either party. W. L. Barnum, Judge.

182 Endorsements: No. 1319. In the District Court. Robert Marshall vs. E. M. Arnold et al. Order extending time to make and serve case made. Received and Filed this 10 Dec. 1910. J. B. Summers, District Clerk, by —— ——, Deputy.

183 Mr. Davidson: The defendants now offer in evidence a quit claim deed, executed July 19, 1910, from W. W. Hyams to E. M. Arnold, covering the lands in controversy, and being recorded in the office of the Register of Deeds of Creek County, Oklahoma, in Book 20, at page 490 thereof, as Defendants' Exhibit "L."

The Court: Ruling reserved.

Defendants' Exhibit "L" is in words and figures as follows, to wit:

184 **DEFENDANTS' EXHIBIT "L."**

15828.

Quit Claim Deed.

W. W. Hyams

to

E. M. Arnold.

This indenture made this 19th day of July in the year A. D. 1910, between W. W. Hyams of the first part, and E. M. Arnold of the second part.

Witnesseth, That the said part of the first part, in consideration of the sum of One Dollar and other valuable and sufficient consideration to him duly paid, the receipt whereof is hereby acknowledged, does hereby quitclaim, grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all his right, title, interest and estate, both at law and in equity, of, in and to the following described real estate situate in the County of Creek and State of Oklahoma, to wit:

The East Half (½) of the Southeast Quarter (¼) of Section thirty (30) and the Northwest Quarter (¼) of the Southwest Quarter (¼) of Section Twenty-nine (29), Township Eighteen (18) North of Range Twelve (12) East of the Indian Meridian, containing one hundred and twenty acres more or less.

The same not being and never having been the homestead of grantor nor occupied by him. Except that a vendor's lien for $600.00 balance of the purchase price of said real estate is hereby reserved by vendor, said being evidenced by three notes, dated July 22, 1910. One for $60.00 due September 1, 1910, One for $250 due October 22, 1910. One for $250 due January 22, 1911, with interest at 8% per annum from date, payable to grantor and signed by grantee.

Together with all and singular the heriditaments and appurtenances thereunto belonging. To have and to hold the above
185 granted premises unto the said part- of the second, his heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand the day and year first above written. W. W. Hyams.

Signed, sealed and delivered in the presence of —— ——.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, Jewel M. Carney, a Notary Public in and for said County and State, on this 22nd day of July, 1910, personally appeared W. W. Hyams and to me known to be the identical person

who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

Witnss my hand and Notarial seal the day and year above set forth. Jewel M. Carney, Notary Public. [Seal.] My commission expires February 6, 1914.

STATE OF OKLAHOMA,
County of Creek:

This instrument was filed in my office for record on the 28th day of July A. D. 1910, at 4 o'clock P. M. and duly recorded in Book Twenty, at page 490. Lafe Speer, Register of Deeds.

186 Mr. Davidson: We also offer in evidence quit claim deed dated January 16, 1911, from S. C. Lawson to E. M. Arnold, covering the lands in controversy, and recorded in the office of the Register of Deeds of Creek County, Oklahoma, in Book 53, at Page 96, as Defendants' Exhibit "M."

The Court: Ruling reserved.

Defendants' Exhibit "M" is in words and figures as follows, to wit:

187 **DEFENDANTS' EXHIBIT "M."**

584.

Quit Claim Deed.

Samuel C. Lawson

to

E. M. Arnold.

This indenture Made this 16 day of Jan. in the year A. D. 1911, between Samuel C. Lawson and E. M. Arnold of the first part and of the second part.

Witnesseth, That the said part of the first part in consideration of the sum of One Dollar—Dollars, to him duly paid, the receipt whereof is hereby acknowledged, does hereby quit claim, grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all his right, title, interest and estate, both at law and in equity, of, in and to the following described real estate situate in the County of Creek and State of Oklahoma, to wit:

An undivided one-twelfth 1/12 interest in and to the East One-Half of the Southeast Quarter of Section Thirty (30) and the Northwest Quarter of the Southwest Quarter of Section Twenty-nine (29). Also an undivided one-twelfth 1/12 interest in assignment of royalties covering the above described land and one-twelfth 1/12 interest in royalties covering the Southwest Quarter ¼ of the South-

west Quarter ¼ of Section (29) in Township Eighteen (18), Range Twelve East of the principal Meridian, being allotment of Robert Marshall.

Together with all singular the heriditaments appurtenances thereunto belonging. To have and to hold the above granted premises unto the said party of the second part, heirs and assigns forever.

In witness whereof The said party of the first part has hereunto set his hand the day and year first above written. Samuel C. Lawson.

Signed, sealed and delivered in the presence of —— ——.

188 STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this 17th day of January, 1911, personally appeared Samuel C. Lawson and to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness My hand and Notarial seal the day and year above set forth. Francis Kimball, Notary Public. [Seal.] My commission expires May 29, 1912.

STATE OF OKLAHOMA,
County of Creek, ss:

This instrument was filed in my office for record on the 25th day of January, A. D. 1911, at 1.25 o'clock P. M. and duly recorded in Book 53, at page 96. H. H. Adams, Register of Deeds, by ——, Deputy.

189 Mr. Davidson: Defendants also offer in evidence the original quit claim deed from E. M. Arnold and his wife, Eleanor Arnold, dated June 30, 1913, to Robert Marshall, covering the lands in controversy, covering the East Half of the Southeast Quarter of Section 30, and the West Half of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, Creek County, Oklahoma; said deed appearing of record in the office of the Register of Deeds of Creek County, Oklahoma, in Book 99, at page 312 thereof, as defendants' Exhibit "N."

The Court: Ruling reserved.

Defendants' Exhibit "N" is in words and figures as follows, to wit:

190 **DEFENDANTS' EXHIBIT "N."**

Quit Claim Deed.

Know all men by these presents:

That the undersigned, E. M. Arnold and Eleanor Arnold, his wife, of Tulsa County, State of Oklahoma, parties of the first part, in consideration of One ($1.00) Dollar and other good and valuable considerations in hand paid, the receipt of which is hereby acknowledged, do hereby remise, release, sell and quitclaim unto Robert Marshall, of Creek County, State of Oklahoma, party of the second part, the following described real property and premises situated in Creek County, State of Oklahoma, to wit:

The East Half of the Southeast Quarter of Section Thirty (30) and the West Half of the Southwest Quarter of Section Twenty-nine (29), all in Township Eighteen (18) North, Range Twelve (12) East of the Indian Base & Meridian,

together with all improvements thereon and appurtenances thereunto belonging, except as follows:

Parties of the first part reserve three-fourths (¾) of the royalty from the oil produced on said land forever, and one-fourth (¼) of said oil royalties are conveyed by this instrument with the land.

It is understood that this instrument is to in nowise interfere with or disturb the parties producing oil and gas on said lease under an oil and gas lease made by parties of the first part and their associates.

This deed is not to be valid or take effect or convey any interest in said land until a contract this day made between the
191 undersigned E. M. Arnold and James H. Harris, Guardian of said Robert Marshall, affecting the above described land and lease thereon and compromising a dispute in regard to same is approved by the County Court of Creek County, Oklahoma.

Signed and Delivered This 30 day of June, 1913. E. M. Arnold. Eleanor Arnold.

STATE OF OKLAHOMA,
Tulsa County, ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this 30 day of June, 1913, personally appeared E. M. Arnold and Eleanor Arnold, his wife, to me known to be the identical persons who executed the above and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year last above written. Chas. E. Roberts, Notary Public. [Seal.] My commission expires 5-29-17.

Endorsements: Quit claim deed. E. M. Arnold and wife to Robert Marshall. State of Oklahoma, County of Creek. This instrument was filed in my office for record on the 29th day of Apr. A. D. 1914 at 1.30 o'clock P. M. and duly recorded in Book 99 at page 312. Huber Hughes, Recorder of Deeds, by C. K. Maddox, Deputy.

192 E. H. SALRIN, a witness, produced, sworn and examined on behalf of the defendants, testified as follows, to wit:

Direct examination by Mr. Davidson:

Q. State your full name.
A. E. H. Salrin.
Q. Where do you live?
A. Tulsa.
Q. What is your connection, if any, with the defendant Tidal Oil Company?
A. Auditor.
Q. How long have you held that position with the Company?
A. Since June, 1914.
Q. Are you familiar with the lands in controversy here?
A. Yes sir.
Q. Do you know E. M. Arnold?
A. Yes sir.
Q. Do you know the plaintiff, J. P. Flanagan?
A. Yes sir.
Q. I will ask you to state what are your duties as auditor of the Tidal Oil Company—strike that out. I will ask you if your duties as Auditor include the payment of royalty moneys?
A. Yes sir.
Q. Can you state to the Court Mr. Salrin, what the condition of these leases was, these lands, was with reference to production at the time that the Okla. Oil Company, now the Tidal Oil Company, took an assignment of the leases from the Orient Oil & Gas Company and from the Arkansas Oil Company; how many wells were there on it?

193 A. 25 producing wells.

Q. Can you state to the Court what the purchase price of those wells was?

Judge Hardy: We object, if the Court please, as incompetent, irrelevant and immaterial. There is no controversy that they had the lease, and the consideration they paid is immaterial.
Mr. Davidson: It is their privilege to object.
The Court: Sustained.
Mr. Biddison: Exception.

Q. Were you ever notified by the plaintiff in this case that he had purchased the fee; if so, when did you get that letter or do you know?

A. I don't know of notice being served; possibly it was served without my knowing it.

Q. Did you ever pay any royalties to the plaintiff in this case?

A. Yes sir, we did.

Judge Hardy: We object on the ground that it is incompetent, irrelevant and immaterial and we ask that the answer of the witness be stricken. The Court may reserve his ruling in connection with it.

Q. How were those royalties paid?

A. By check.

Q. Have you got the checks?

A. Yes sir.

Judge Hardy: We would like our objection to go to all of the evidence of this character, of this witness, and the Court may reserve his ruling.

194 The Court: The plaintiff testified he did receive these checks. I don't know just what the purpose of this examination is.

Mr. Davidson: It is quite material.

Judge Hardy: It is in support of the plea of estoppel as against the plaintiff.

The Court: The plaintiff has already admitted that he received the checks.

Mr. Davidson: Well we want to show the length of time.

The Court: All right. Go ahead.

Q. Can you state to the Court, Mr. Salrin, what these checks were for?

A. For royalty on oil produced from the Robert Marshall farm.

Q. Under what lease?

A. Under the lease acquired by the Tidal Oil Company from the Orient Oil & Gas Company and the Arkansas Oil Company.

Q. Do these checks cover the full one-eighth royalty?

A. No sir.

Q. What portion of the royalties do they cover?

A. 1/32 of the gross oil or ¼ of the ⅛ royalty.

Q. To whom was the other ¾ royalty paid?

A. Eleanor Arnold.

Q. One of the defendants in this case?

A. Yes sir.

Q. Are you familiar with the signature of Mr. Flanagan?

A. No sir, I am not.

Q. Can you state to the Court whether the amount of these checks was collected?

195 A. Yes sir, they were cashed by the bank as evidenced by the cancelled checks.

Mr. Davidson: Defendants offer in evidence, if the Court please, checks of March 21st, May 12th, May 13th, June 13th, July 15th, August 16th, September 15th, and October 15th, 1916, payable to

J. P. Flanagan, in payment of ¼ of the ⅛ royalty, prescribed under the leases under which the Okla. Oil Company, now the Tidal Oil Company, was producing oil and gas on the lands in controversy, as their Exhibit "O."

Judge Hardy: Plaintiff objects to the introduction of the several exhibits offered, on the ground that the same are incompetent, irrelevant and immaterial, and is an effort on the part of the defendant Tribal Oil Company to acquire title to restricted lands of a Creek Indian minor, by estoppel, and in violation of the acts of Congress regulating the allienation of lands of that character.

The Court: Ruling reserved.

Defendants' Exhibit "O" is in words and figures as follows, to wit:

196 **DEFENDANTS' EXHIBIT "O."**

Check No. 2186.

Voucher No. C 42.

"Tulsa, Okla., Mar. 21, 1916.

Okla. Oil Company.

Pay to the order of J. P. Flanagan, Tulsa, Oklahoma, $56.49, Not over Sixty Dollars 60, ### Fifty-six and 49/100 Dollars. ###

To the National Bank of Commerce, Tulsa, Okla. C. E. Hane, Treasurer.

Endorsements on front: "Exchange Nat. Bank. Mar. 21, 1916. Teller No. 2. Tulsa, Oklahoma." 2.

Stenciled on front: "86-4. 3-22-16.

Endorsements on back: "Endorsement by payee of this check guarantees acceptance of it in full settlement of account as stated on accompanying voucher which he acknowledges to have received and detached. J. P. Flanagan. Tulsa 3 Clearing Exchange National Bank. Prior Endorsements Guaranteed. Paid Mar. 22, 1916. House 3 Association.

197 **DEFENDANTS' EXHIBIT "O."**

Check No. 3743.

Voucher No. D 194.

"Tulsa, Okla., Mar. 21, 1916.

Okla. Oil Company.

Pay to the order of J. P. Flanagan, Box 751, Tulsa, Oklahoma, $89.85, Not over Ninety Dollars 90, ### Eighty-nine and 85/100 Dollars. ###

To the National Bank of Commerce, Tulsa, Okla. E. H. Salrin, For Treasurer.

Endorsements on front: "Exchange National Bank, Tulsa, Okla. May 15, 1916. Teller No. 3."

Stenciled on front: 86-4. 5-16-16.

Endorsements on back: "Endorsement by payee of the check guarantees acceptance of it in full settlement of account as stated on accompanying voucher which he acknowledges to have received and detached. J. P. Flanagan." Tulsa 3 Clearing Exchange National Bank. Prior Endorsements Guaranteed. Paid May 16, 1916. House 3 Association.

198 **DEFENDANTS' EXHIBIT "O."**

Check No. 3763.

Voucher No. D 450.

Tulsa, Okla., May 13, 1916.

Okla. Oil Cmpany.

Pay to the order of J. P. Flanagan, Box 751, Tulsa, Oklahoma, $71.08, Not over Eighty Dollars 80. ### Seventy-one and 8/100 Dollars. ###

To the National Bank of Commerce Tulsa, Okla. E. H. Salrin, For Treasurer.

Endorsements on front: "Exchange National Bank, Tulsa, Okla. May 15, 1916. Teller No. 3."

Stenciled on front: 86-4. 5-16-16.

Endorsements on back: "Endorsement by payee of this check guarantees acceptance of it in full settlement of account as stated on accompanying voucher which he acknowledges to have received and detached. J. P. Flanagan." Tulsa 3 Clearing Exchange National Bank. Prior Endorsements Guaranteed. Paid May 16, 1916. House 3 Association.

199 **DEFENDANTS' EXHIBIT "O."**

Check No. 4467.

Voucher No. E 178.

"Tulsa, Okla., Jun. 13, 1916.

Okla. Oil Company.

Pay to the Order of J. P. Flanagan, Box 751, Tulsa, Oklahoma, $100.90, Not over One Hundred Ten 110. ### One Hundred and 9/100 dollars. ###

To the National Bank of Commerce Tulsa, Okla. E. H. Salrin, For Treasurer.

Endorsements on front: 'Exchange National Bank Jun. 15, 1916. Teller No. 4, Tulsa, Okla."

Stenciled on front: 86-4. 6-16-16.

Endorsements on back: "Endorsement by payee of this check guarantees acceptance of it in full settlement of account as stated on accompanying voucher which he acknowledges to have received and detached. J. P. Flanagan. "Tulsa 3 Clearing Exchange National Bank. Prior Endorsements Guaranteed. Paid Jun. 16, 1916. House 3 Association.

200 **DEFENDANTS' EXHIBIT "O."**

Check No. 5728.

Voucher No. F 246.

Tulsa, Okla., Jul. 15, 1916.

Tidal Oil Company.

Pay to the Order of J. P. Flanagan, Box 751, Tulsa, Oklahoma. $84.41, Not over Ninety Dollars 90, ### Eighty-four and 41/100. ###

To the National Bank of Commerce, Tulsa, Oklahoma. E. H. Salrin, For Treasurer.

Endorsements on front: 86-4. 7-19-16. Exchange National Bank. Jul. 18, 1916. Teller No. 2. Tulsa, Oklahoma.

Endorsements on back: "Endorsement by payee of this check guarantees acceptance of it in full settlement of account as stated on accompanying voucher which he acknowledges to have received and attached. J. P. Flanagan. Tulsa 3 Clearing Exchange National Bank. Prior Endorsements Guaranteed. Paid Jul. 19, 1916. House 3 Association.

201 **DEFENDANTS' EXHIBIT "O."**

Check No. 7025.

Voucher No. G 353.

"Tulsa, Okla., Aug. 16, 1916. 191-.

Tidal Oil Company.

Pay to the Order of J. P. Flanagan, Box 751, Tulsa, Oklahoma, $62.85, Not over Seventy Dollars 70, ### Sixty-two and 85/100 Dollars. ###

To the National Bank of Commerce, Tulsa, Oklahoma. E. H. Salrin, For Treasurer.

Endorsements on front: 86-4. 8-29-16. Exchange Nat. Bank, Aug. 28, 1916. Teller No. 2 Tulsa, Oklahoma.

Endorsements on back: "Endorsement by payee of this check guarantees acceptance of it in full settlement of account as stated on accompanying voucher which he acknowledges to have received and detached. J. P. Flanagan, By J. E. F. Tulsa 3 Clearing Exchange National Bank. Prior Endorsements Guaranteed. Paid Aug. 29, 1916. House 3 Association.

202 **DEFENDANTS' EXHIBIT "O."**

Check No. 8196.

Voucher No. H 274.

"Tulsa, Okla., Sep. 15, 1916. 191–.

Tidal Oil Company.

Pay to the Order of J. P. Flanagan, Box 751, Tulsa, Okla., $51.74, Not over Sixty Dollars $–0$ ###Fifty-one and 75/100 Dollars.###

To the National Bank of Commerce Tulsa, Oklahoma. E. H. Salrin, For Treasurer.

Endorsements on Front: 86-4 9-23-16 Exchange Nat. Bank Sep. 23, 1916, Teller No. 2. Tulsa, Oklahoma.

Endorsements on Back: "Endorsement by payee of this check guarantees acceptance of it in full settlement of account as stated on accompanying voucher which he acknowledges to have received and detached. J. P. Flanagan. Tulsa 3 Clearing, Exchange National Bank. Prior Endorsements Guaranteed. Paid Sep. 25, 1916. House 3 Association.

203 **DEFENDANTS' EXHIBIT "O."**

Check No. 9330.

Voucher No. 1 271.

"Tulsa, Okla., Oct. 13, 1916. 191-.

Tidal Oil Company.

Pay to the Order of J. P. Flanagan, Tulsa, Okla., $67.59, Not over Seventy Dollars 70 ###Sixty-seven and 59.100 Dollars.###

To the National Bank of Commerce Tulsa, Oklahoma. E. H. Salrin, For Treasurer.

Endorsements on Front: 86-4 10-16-16 Exchange National Bank, Oct. 14, 1916, Teller No. 3, Tulsa, Okla.

Endorsements on Back: "Endorsement by payee of this check guarantees acceptance of it in full settlement of account as stated on accompanying voucher which he acknowledges to have received and detached. J. P. Flanagan. Tulsa 3 Clearing Exchange National Bank Prior Endorsements Guaranteed. Paid Oct. 16, 1916. House 3 Association.

204 By Mr. Davidson:

Q. Do you know whether Mr. Flanagan ever objected to the payment of the other three-fourths of the oil royalties to Eleanor Arnold?

A. Not to my knowledge.

Judge Hardy: We would like the same objection to go to all of thes questions, without repetition.

The Court: Yes sir. Ruling reserved.

Q. Can you tell the Court if, after you began paying royalties to Mr. Flanagan, you have drilled any additional wells on this land?

A. They did.

Q. How many?

A. Five.

Q. How many wells were drilled during the time you were paying these royalties to Mr. Flanagan?

A. Four.

Q. Were these wells completed and equipped during this period of time?

A. Completely equipped—drilled and equipped, yes sir.

Q. Can you tell the Court what they cost?

Judge Hardy: That is immaterial unless they want to introduce it on the question of accounting.

Mr. Davidson: That is not the point.

Judge Hardy: Then it is utterly immaterial.

205 Mr. Biddison: It is clearly competent on the question of estoppel; when one goes on and recognizes the right of a party to go on and develop the property upon certain terms and conditions and investing his money. We want to show it was a substantial sum. If there is anything in the world that will estop a man, it is material. If the minor himself had done that after he became of age, it would have estopped him.

Judge Hardy: No sir.

Q. Answer the question.

A. Do you mean the four wells drilled?

Q. Yes sir, those wells drilled and equipped during the time you were paying royalties to Mr. Flanagan, without objection by him.

A. About $18,000.00.

By Mr. Davidson: That is all.

Cross-examination by Judge Brown:

Q. Mr. Salrin, you stated that the Tidal Oil Company paid these royalties under the leases which they procured from the Orient and the Arkansas Company?

A. Did I state that?

Q. Yes sir.

A. Yes sir, that is the way, under assignment to us.

Q. Isn't it a fact that during the year 1916 the leases which had been executed to the Orient and the Arkansas had expired?

A. Not to my knowledge.

206 Q. You don't know as a matter of fact that the leases which your company acquired from the Orient Oil & Gas Company and the Arkansas Company expired in April, 1915?

A. I know they didn't.

Q. You don't have those leases there, do you?

A. No, I don't but I know we would not buy leases expiring in 1915 and pay fifty thousand dollars for them.

Q. That is the only reason you know that those old leases hadn't expired?

A. That is sufficient I think.

Q. Isn't it a fact that you were claiming at that time under a lease which Arnold, Lawson and Hyams had executed to the Orient and to the Arkansas Company?

A. Not that I know of.

Q. Well your Company doesn't claim any right to the leasehold estate except under the old Departmental leases executed to the Orient and to the Arkansas?

A. I have no way of knowing and do not pass upon the titles of our company.

Q. You don't know when those old Departmental leases expired?

A. I don't know anything about it.

Q. And you don't know what other lease the company had?

A. No sir.

Q. All you know is that your company was in possession operating the property for oil and gas during the year 1916, when you made these checks payable to J. P. Flanagan?

A. Yes sir.

Q. Now did you mail any other checks subsequent to October, 1916?

A. Yes sir.

Q. What was done with those?

207 A. They were returned, I think all of them were returned by Mr. Flanagan.

Q. Returned to the Company?

A. To the Company, yes sir.

Q. Uncashed?

A. Uncashed, yes sir.

Q. You testified that during the time that your company had made these payments, from March to October, in the year 1916, that you drilled how many wells?

A. Four wells.
Q. Do you have the record of those wells?
A. What do you mean by record?
Q. The dates.
A. Yes sir.
Q. Will you please tell the Court what dates they were drilled, completed?
A. April 8th.
Q. What year?
A. 1916; May 3, 1916; May 12, 1916 and July 6, 1916.
Q. And have you in your records the exact location of those wells?
A. Yes sir.
Q. Please state that.
A. On April 8th the well known by us as Number One, located in the Northeast corner of the Southwest Quarter of the Southwest Quarter of 29.
Q. Just go ahead.
A. Number three, located in the Southeast corner of the same quarter section, and number 12 located in the center of the west line of the southeast quarter of the southeast quarter of Section 30; and number nine, located in the southeast corner of the
208 Southeast Quarter of the Southeast Quarter of Section thirty.
Q. Do you know Mr. C. E. Hane?
A. Yes sir.
Q. What position does he occupy with the company?
A. Secretary-Treasurer.
Q. Was he such Secretary-Treasurer in the year 1916?
A. Yes sir.
Q. Do you know Mr. Frank Haskell?
A. Yes sir.
Q. What position, if any, does he occupy with the company?
A. Vice President and General Manager.
Q. Was he such during the year 1916?
A. Yes sir.

By Mr. Brown: That is all.

Redirect examination by Mr. Davidson:

Q. Was the Arkansas and the Orient, your assignors, in actual possession of these properties when you bought them?
A. They were in possession, yes sir.
Q. To produce oil and gas from them?
A. Yes sir.
Q. And your company has been in possession since the assignment?
A. Yes sir.
Q. And is in possession at this time?
A. Yes sir.

By Mr. Davidson: That is all.

209 Recross-examination by Mr. Brown:

Q. How do you know the Arkansas and the Orient were in possession at the time of the assignment to you?

A. I know that we paid the money; we dealt with the representatives of those companies and paid the moneys to the parties.

Q. You didn't have anything to do with the purchasing of the leases, did you?

A. I had nothing to do personally with the purchase except I verified the records and inventory.

Q. Did you go upon the property?

A. No, I wasn't on the property.

By Mr. Brown: That is all.

(Witness Excused.)

210 Mr. Brown: I want to ask Mr. Arnold a question on cross examination.

The Court: All right; Mr. Bailiff, call Mr. Arnold.

E. M. Arnold, being recalled by the plaintiff, testified further as follows, to wit:

Cross-examination by Mr. Brown:

Q. Mr. Arnold, I believe you stated in your direct examination that you are the E. M. Arnod in a certain suit to quiet title in the District Court of Creek County, sometime in the year 1910 or 1909?

A. Yes sir.

Q. And Mr. W. W. Hyams and S. C. Lawson were also parties to that suit?

A. Yes sir.

Q. Their interest was joined with yours, was it not?

A. I believe they were.

Q. In other words you and those two gentlemen were parties defendant in the lawsuit?

A. We were all three interested in the property.

Q. And you had all purchased the lands prior to that time?

A. Yes sir.

Q. From Robert Marshall, the plaintiff?

A. And his wife, Eleanor.

Q. You had taken a deed from Robert and his wife prior to that proceeding in the District Court?

A. Yes sir.

Q. And you had taken a deed; that deed so taken was taken pursuant to an order of this court, conferring majority rights
211 upon Robert Marshall?

Mr. Biddison: We object to that as not proper cross examination. We insist it is evidence that should have been introduced as part of

their case in chief. It is not a cross-examination of this witness at all.

Mr. Brown: He can testify as to his knowledge in connection with that suit.

Mr. Biddison: The proposition is a proposition for them to meet in their case. This witness did not testify anything about the contents of the journal entry.

The Court: Sustained.

Mr. Brown: Note an exception.

Q. Did you deal in person with Robert Marshall when you bought the property from him?

Mr. Biddison: Objected to as not proper cross-examination, it not having been shown in direct examination of this witness that he ever bought from Robert Marshall.

By Mr. Brown: I will withdraw the question. That is all.

Mr. Biddison: That is all.

(Witness excused.)

Mr. Davidson: We rest.

212 Thereupon The Plaintiff introduced in rebuttal the following evidence herein, to wit:

J. P. FLANAGAN, a witness for the plaintiff, being recalled, testified further in his own behalf as follows, to wit:

Direct examination by Mr. Brown:

Q. Mr. Flanagan, you are acquainted with Mr. C. E. Hane and Frank Haskell?

A. Yes sir.

Q. Mr. Hane is Secretary-Treasurer of the defendant Tidal Oil Company?

A. Yes sir.

Q. Mr. Haskell is Vice-President and General Manager?

A. Yes sir.

Q. Were they such during the year 1916?

A. Yes sir.

Q. At that time between the months of March and November of that year did you have any conversation with those gentlemen or either of them with reference to this property?

A. I had a conversation with both gentlemen.

Q. And at what place?

A. At their office.

Q. At what time?

A. I don't recall the exact date, I should say along in February, 1916.

Q. In February, 1916, did you have this conversation with them—have more than one conversation that you recall?

A. I had had a couple of conversations with their attorney, Mr. Sherman, prior to my conversations with these two gentlemen.
213 Q. Did you have any other conversation with them?
A. I think not; I don't recall.
Q. State to the Court what that conversation was, with reference to this property.

Mr. Davidson: We object to that as incompetent, irrelevant and immaterial, too general and not proper rebuttal.
Mr. Biddison: The defendant Eleanor Arnold objects as not binding on her.
Mr. Brown: The Arnold objection is good but as to the Tidal Oil Company we want to show the circumstances under which the royalties were paid.
The Court: Sustained as to Arnold, overruled as to the Tidal.
Mr. Davidson: Exception.

Q. You may state the conversation.
A. At this time developed the controversy about the title that I had acquired from Robert Marshall. It seems from the records here he was an incompetent. It developed after I had taken this first deed from him, and I had my attorney examine the records for me and he so notified me.

Mr. Davidson: We object to the answer and ask to have it stricken as stating his conclusion and opinion.
Mr. Brown: We confess the objection.

Q. Just state the conversation you had with Hane and Haskell.
A. I asked these gentlemen whether or not they cared to
214 join me in an effort to perfect the title on the assumption that the title we all held was very questionable. I then stated that to Roger Sherman who——

Mr. Davidson: We move to strike the answer.
The Court: State the conversation.

A. In any event after consideration they stated that they didn't see any good reason in assisting me to perfect my title, and declined to join me in the effort to fix up the title for all of us; that they were satisfied with theirs and would stand on it, and I explained that there was a proposition on foot at that time for a certain sum of money we could undoubtedly fix the title, get a good title to the property but I could not afford to pay that amount for a thirty-second interest and that somebody would buy it with a view of attacking the title; and Mr. Haskell stated, as I said, that he was satisfied with their title, that their title passed a long time prior to that and that he didn't see fit to join; that anybody who cared to purchase the land was at liberty to do so, could purchase the title and that it might as well be me. I thereupon made the remark that under the circumstances probably it would be me.
Q. Did you thereafter perfect the title?
A. Yes sir.

Q. Did you accept any of this royalty after so perfecting your title?

A. No sir.

Q. Mr. Flanagan, were you ever requested by the defendant Tidal Oil Company to sign a division order?

215 Mr. Davidson: We object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Davidson: Exception.

A. Yes sir.

Q. About what time, do you recall?

A. About October, 1916.

Q. And did they send you such an instrument?

A. Yes sir.

Q. What did you do with it?

A. I sent it to my lawyer.

Q. Did you sign it?

A. No sir.

Q. Now you say that was some time during the month of October?

A. That is my recollection; I was in Texas at the time.

Q. I hand you here a paper and will ask you to state if you know what this is (handing paper to witness).

A. Yes sir.

Q. Now can you refresh your recollection from that statement, from that paper, in order to determine the date on which they asked you to sign the division order?

A. I think you have the wrong letter.

Q. Yes, I beg your pardon; there is the letter (handing paper to the witness).

A. This is the letter in question, I received with reference to the division order, October 1917.

Q. 1916?

A. This letter is dated 1917.

Q. Did you sign such division order?

216 A. No sir.

By Mr. Brown: You may examine him.

Cross-examination by Mr. Davidson:

Q. That was long after you had been accepting these royalties?

A. Yes sir.

Q. When they asked you to sign the division order; at the time you declined to sign it you had already accepted these checks?

A. For one-fourth of the royalties, that is all I claimed at that time.

Q. Now you say in this talk you had with Haskell and Hane with reference to your title and their title and trying to get them to agree to assist you, they declined to do it?

A. Yes sir.

By Mr. Davidson: That is all.
By Mr. Brown: That is all.

(Witness excused.)

Mr. Brown: That is all.
Mr. Davidson: Do you rest?
Mr. Brown: Yes sir.
Mr. Biddison: We will ask in behalf of the defendant Eleanor Arnold, findings of fact and conclusions of law separately stated in writing, by the court.
Mr. Hardy: He ought to make specific requests. That is just like instructions, he must make specific requests.
217 Mr. Biddison: That is not the law. I am not asking for special findings. I am asking the Court to separately state his findings of fact and conclusions of law, in writing.
Mr. Brown: If your Honor please, just one thing; Counsel have introduced certain journal entries, three I believe, of the District Court, which refer to certain other pleadings; and I believe, in rebuttal thereto that we would like leave to introduce the pleadings in that case. We haven't them here but we can get certified copies and submit them.
Mr. Davidson: The purpose of these pleadings was simply to show that petition was filed to vacate the judgment, which was denied, and then three orders were made extending the time to make and serve case made; and while the plaintiff was considering the appeal, this compromise agreement was reached. That was the purpose of offering them.
Mr. Brown: The judgment was based upon majority right.
The Court: Leave granted to introduce them.
Mr. Biddison: It takes a pleading to vacate and set aside a judgment and there is no pleading here that would justify the introduction of any defense to that judgment whatever.
Judge Hardy: The decree about which we are asking is the one seeking to quiet title. Marshall brought suit against them to quiet title, and the pleadings we refer to are the pleadings in that case, pleadings to set aside the judgment.
Mr. Biddison: They haven't pleaded any basis for invalidating that judgment whatever.
218 Mr. Davidson: Their theory is that they are void as they appear on their face. Now if they are seeking to attack them on some other ground than that appearing on their face, they must plead it.
The Court: I don't know what your pleadings show.
Mr. Biddison: They don't plead anything to invalidate that judgment whatever.
The Court: So far as this record is concerned there has been no objection.
Mr. Biddison: I am certainly objecting to it; that is just what I did do.
Mr. Brown: We ask leave to offer it.

Mr. Biddison: We object because not within the issues in the case and incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Biddison: Note an exception.

Mr. Brown: I will make my offer a little more definite. We offer in evidence the following pleadings in case number 1317 in the District Court of Creek County, Oklahoma, the same being the case in which the journal entry of judgment has been offered by defendant Tidal Oil Company, to wit: the amended petition of Robert Marshall, the amended petition of Bates B. Burnett as guardian of Robert Marshall, the answer of defendants E. M. Arnold, W. W. Hyams and S. C. Lawson, and the amended answer of said defendants and the reply therein.

219 Mr. Biddison: To which and each of them the defendants object for the reason that they are incompetent, irrelevant and immaterial and not within the issues in the case nor supported by any pleading authorizing their introduction.

The Court: Overruled.

Mr. Biddison: Exception.

Mr. Brown: That is all.

220 **PLAINTIFF'S EXHIBIT NINE.**

STATE OF OKLAHOMA,
Creek County, ss:

In the District Court in and for said County and State.

ROBERT MARSHALL, a Minor and Infant, by R. B. THOMPSON, His Next Friend, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Amended Petition.

Comes now the plaintiff, Robert Marshall, a minor and infant, by R. B. Thompson, as his next friend, and for his cause of action against the defendants, E. M. Arnold, W. W. Hyams and S. C. Lawson, and each of them, alleges and avers:

1. That the plaintiff is an infant sixteen years of age, and resides in Creek County, State of Oklahoma; that he is a member and citizen of the Creek Tribe or Nation of Indians, and is enrolled upon the Freedman Roll thereof as No. 5449; that heretofore there was allotted to him as such citizen and member of said tribe and nation the following described tracts of land, situate in Creek County, State of Oklahoma, to wit: The West half of the Southwest Quarter of Section twenty-nine (29), and the East half of the Southeast

221 Quarter of Section thirty (30), Township eighteen (18) North, Range twelve (12) East.

2. That all of said described real estate is situate in a highly productive oil field, and is chiefly valuable for its oil mineral worth; and that said tracts are of the reasonable market value of thirty two thousand ($32,000.00) dollars, and was of such value at all the times mentioned in this amended petition.

3. That The Orient Oil & Gas Company holds an oil and gas mining lease upon eighty (80) acres of said lands, and The Arkansas Oil & Gas Company holds an oil and gas mining lease upon the remaining eighty (80) acres thereof; that in said leases there is reserved to the plaintiff the royalty of one-eighth of the gross production of oil produced upon said real estate. That the greater portion of said tracts of land is developed and is being operated by said oil companies, and oil is produced thereon in vast quantities; and that the value of the plaintiff's share of the monthly production thereof is approximately $350.00.

4. That the plaintiff, at the various times in this amended petition mentioned, was a mere boy, uneducated, and inexperienced in the transaction of business, and he had no knowledge whatever of the value of said premises, or of the amount of the royalties reserved for him in said leases, or of the production thereon. That the defendants, on the other hand, were all shrewd, skilled and experienced dealers and operators in land and oil mining, and were thoroughly conversant with said premises, the quantity of oil produced thereon, and the value of said premises and such oil production.

222 5. That heretofore, to wit, on the 25th day of October, 1909, said defendants, by fraud, deceit and undue influence, induced the plaintiff to make and deliver to them a warranty deed conveying to them said half of the Southeast Quarter of section thirty (30), and the Northwest Quarter of the Southwest Quarter of section twenty-nine (29), Township eighteen (18) North, Range twelve (12) East containing one hundred and twenty (120) acres, situate in Creek County, State of Oklahoma; that in said warranty deed the consideration is recited to be Ten Thousand ($10,000.00) Dollars; that the defendants forthwith, on said October 25, 1909, caused said deed to be filed for record in the office of the Register of Deeds of said Creek County, and the same was recorded in Book 36, at page 229.

6. That concurrently with the execution and deliver- of said warranty deed, on said 25th day of October, 1909, the defendants, by fraud, deceit and undue influence, also induced the plaintiff to make and deliver to them a written assignment, whereby the plaintiff transferred and conveyed to them all accrued and accruing oil and gas royalties growing out of said oil mining leases; that the defendants likewise, on said 25th day of October, 1909, deposited said written assignment for record and the same was on said day filed and recorded in the office of the Regitser of Deeds of said Creek County.

7. That thereafter, to wit: on the 27th day of October, 1909, the defendants, by fraud, deceit, and undue influence, induced the plaintiff to make and deliver to them an option contract, wherein

223 and whereby he granted to the defendants the right and option, for the term of twelve (12) months from said date,

to purchase, for the consideration of three thousand ($3,000.00) dollars, said Southwest Quarter of the Southeast Quarter of section twenty-nine (29) Township eighteen (18) North, Range twelve (12) East; and on the date thereof the defendants caused said option contract to be filed and recorded in the office of the Register of Deeds of said Creek County. That for the making and delivery thereof the plaintiff received no consideration whatever.

8. That concurrently with the making and delivery of said option contract, the defendants, by fraud, deceit and undue influence, induced the plaintiff to make and deliver to them an oil and gas mining lease, for the term of five (5) years, beginning April 13, 1915, reserving to the plaintiff a royalty of one-eighth of the oil produced thereunder. That for the making and delivery of said oil and gas mining lease, the plaintiff received no consideration. That said oil and gas mining lease covers said Southwest Quarter of the Southwest Quarter of section twenty-nine (29), Township eighteen (18) North, Range twelve (12) East.

9. That the real estate described in said option contract and oil and gas mining lease is the actual market value of eight thousand ($8,000.00) Dollars, and on said October 27, 1909, was of such value, and this fact the defendants well knew. That said tract of land is of no practical value except for oil mining purposes.

224 10. That the sole and only consideration received by the plaintiff for the making and delivery of the instruments mentioned and described in this amended petition was the following: Five Hundred ($500.00) Dollars in cash paid to him and the delivery of five (5) promissory notes dated November 1, 1909, bearing six (6) per cent. interest, payable to the plaintiff, signed by the defendants; that said promissory notes are of the following denominations and maturity; One promissory note for $500.00 due and payable six months after date thereof; one promissory note for $500.00 due and payable in twelve months from date thereof; one promissory note for $500.00 due and payable eighteen months after date thereof; one promissory note for $500.00 due and payable twenty-four months after date thereof; and one promissory note for $7,000.00 due and payable thirty months after date thereof; that all of said promissory notes were by the defendants delivered to the plaintiff, and said notes are now in the custody of said R. B. Thompson for the plaintiff's use.

11. That on said October 25th and 27th, 1909, the plaintiff was wholly ignorant of the amount due and unpaid to him on account of the accrued royalty upon said oil and gas mining leases, and the defendants well knew this fact; that the defendants, on the other hand, actually knew the amount thereof and concealed such knowledge from the plaintiff.

12. That the defendants and each of them are insolvent, and they have no money or means wherewith to pay said promissory notes except the proceeds to be derived from a disposition of the lands and properties so wrongfully obtained from this plaintiff; that

225 said promissory notes are of no value or worth whatever.

13. That the fraud, deceit and undue influence of the defendants which induced him to convey and transfer to them the premises and properties hereinbefore mentioned and described, in addition to what has already been stated consisted of the following acts on the part of the defendants: That commencing about July 1, 1909, and continuing to and including the 27th day of October, 1909, the defendants and each of them well knowing the infancy, inexperience and mental incapacity of the plaintiff, and his utter inability to know or understand the nature or effect of the several transactions so had with him on October 25th and 27th, 1909, by a well planned and designed scheme and system, the defendants courted the plaintiff's favor, faith and confidence in them, their honesty and integrity, all with the sole object in view of defrauding and depriving him of his property. That by sich practices the defendants and each of them completely won the implicit faith and confidence of the plaintiff in them, and such relation existed between the plaintiff and the defendants on said October 25th and 27th, 1909. That immediately before the plaintiff made and delivered to the defendants the several instruments of conveyance hereinbefore mentioned and described, the defendants represented to him that they were solvent, that the bargains so to be made with him were fair, just and to the plaintiff's best interests; that the defendants thereupon took the plaintiff into their care and
226 custody, keeping him in seclusion, preventing him from communicating or counseling with other persons, except the plaintiff's wife, Ellen Marshall, who is also an infant and uneducated and inexperienced, That at the times of the making and delivery of said instruments of conveyance, the plaintiff believed and relied upon the different and several representations of the defendants and their manifestations of interest in him and solicitude for his welfare, and acted solely upon the advice and counsel of the defendants advising and urging him to make and deliver to them said several instruments as aforesaid.

14. That the plaintiff prior to the commencement of this action rescinded and now rescinds and disaffirms all of the transactions so had with the defendants on October 25th and 27th, 1909, and he offers to restore to the defendants whatever he has received from them on account thereof, and here tenders into court said several promissory notes, and offers to do in the premises whatever the court shall deem just and equitable.

15. Wherefore, the premises considered, the plaintiff prays for judgment cancelling and holding for naught the several instruments of conveyance made by this plaintiff and delivered to the defendants on said October 25th and 27th, 1909, that the clouds upon the title to said lands created by the record of such instruments be removed; that all the plaintiff's rights in and to said premises and every part thereof be restored; that the defendants be adjudged and decreed to have no interest, estate or equity therein; and that they and each of them, their agents, and every person claiming or asserting
227 any interest or right in or to said premises, be forever restrained and enjoined therefrom; and that the plaintiff have

all other and further relief, which the court shall deem just and equitable. Wrightsman, Busk & Johnson, Wm. Jenkins, Thompson & Smith, Henry McGraw, Attorneys for Plaintiff.

Endorsements: No. 1319. In the District Court. Robert Marshall, Plaintiff, vs. E. M. Arnold et al., Defendants. Amended Petition. Filed in Open Court 3 February 1910. J. B. Summers, District Clerk.

228 **PLAINTIFF'S EXHIBIT TEN.**

In the District Court within and for Creek County in the Twenty-Second Judicial District of the State of Oklahoma.

No. 1319.

BATES B. BURNETT, Guardian of Robert Marshall, a Minor and Incompetent Person, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Amended Petition.

Comes now Bates B. Burnett as Guardian of Robert Marshall a minor and incompetent person, and for his cause of action against said defendants and each of them states:

First. That all of the things hereinafter referred to, occur-ed at and prior to the time of the filing of the original petition herein, except that on or about the 21st day of February, 1910, the said Bates B. Burnett was, by the County Court of Creek County, Oklahoma, duly appointed Guardian of the said Robert Marshall a minor and incompetent person; that thereupon the said Bates B. Burnett duly filed his bond, took and subscribed the oath of office, and fully qualified as such guardian of said Robert Marshall; a copy of said letters of guardianship is hereto attached marked exhibit "A" and made a part hereof.

Second. That the plaintiff is an infant sixteen years of age, and resides in Creek County, State of Oklahoma; that he is a
229 member and citizen of the Creek Tribe or Nation of Indians, and is enrolled on the Freedman Roll thereof as No. 5449; that heretofore there was allotted to him as such citizen and member of such tribe and nation the following described tracts of land, situate in Creek County, State of Oklahoma, to wit: The West Half of the Southwest Quarter of Section Twenty-nine (29) and the East Half of the Southeast Quarter of Section Thirty (30) Township Eighteen North and Range Twelve East.

Third. That all of said real estate is situate in a highly productive oil field, and is chiefly valuable for its oil mineral worth; and that said tracts are of the reasonably market value of Thirty-two Thou-

sand Dollars ($32,000.00) and was of such value at all the times mentioned in this amended petition.

Fourth. That the Orient Oil & Gas Company holds and oil and gas mining lease upon eighty (80) acres of said lands; and the Arkansas Oil & Gas Company holds and oil and gas mining lease upon the remaining eighty acres thereof; that in said leases there is reserved to the plaintiff the royalty of one-eighth of the gross production of oil produced upon said real estate. That the greater portion of said tracts of land is developed and is being operated by said oil companies, and oil is produced thereon in vast quantities; and that the value of the plaintiff's share of the monthly production thereof is approximately $350.00.

Fifth. That the plaintiff, at the various times in this petition mentioned, was a mere boy, uneducated, and inexperienced in the transaction of business, and he had no knowledge whatever of the value of said premises, or of the amount of the *the* royaties reserved
230 for him in said leases, or of the production thereon. That the defendants, on the other hand, were all shrewd, skilled and experienced dealers and operators in land and oil mining, and were thoroughly conversant with said premises, the quantity of oil produced thereon, and the value of said premises and such oil productions.

Sixth. That the said defendants, with design and intent on their part to cheat and defraud the said minor, Robert Marshall, arranged and planned to induce the said Robert Marshall to do acts and things on his part by which they could procure the title to said land from the said Robert Marshall, and in pursuance of said plans on the part of said defendants and each of them, they induced the said Robert Marshall a minor, to go out of the State of Oklahoma, into another State, to wit: the State of Kansas, and marry a girl who was then only fourteen years of age; that said marriage ceremony was performed at Coffeyville, Kansas; and shortly after said marriage was performed, the exact date of said marriage being now unknown to this plaintiff, the said defendants, fraudulently and with intent to cheat and defraud the said Robert Marshall, a minor, procured and assignment of the oil and gas royalties to be thereafter derived from the said land above described, which said assignment was made to defendant, Samuel C. Lawson, who is one and the same person as S. C. Lawson, one of the defendants above named; that said assignment purports to have been executed on the 28th day of July, 1909, and was thereafter, on the 31st day of July, 1909, recorded in Book 30 at Page 322 in the office of the Register of Deeds of Creek County, Oklahoma; a copy of said assignment is hereto attached
231 marked exhibit "B" and made a part hereof.

Seventh. That thereafter, on or about the 25th day of October, 1909, the said defendants fraudulently and with intent to cheat and defraud Robert Marshall, a minor and incompetent person, procured another assignment on said land above described, and thereafter, on the 25th day of October, 1909, at 7 o'clock P. M. of said day, caused the same to be recorded in the office of the Register

of Deeds of Creek County, Oklahoma, in Book 23 at Page 598; a copy of said assignment is hereto attached marked exhibit "C" and made a part hereof; that each of said assignments were made without any consideration whatever to the said Robert Marshall, and without the said Robert Marshall knowing or understanding the nature and extent of the instruments he so signed.

Eighth. That the said defendants, not being willing to rely upon the marriage of the said Robert Marshall to make their title good in procuring assignments and deeds from the said Robert Marshall to the said land above described, and in furtherance of their fraudulent intent, purposes and practices employed attorneys and caused a suit to be filed in the District Court of Creek County, Oklahoma, to have rights of majority conferred on the said Robert Marshall, a minor, with the fraudulent and purpose of then procuring deeds to said lands above described, which belonged to the said Robert Marshall, a minor, and procure assignments of his oil and gas royalties; said petition was filed on or about the 7th day of September, 1909, and is case No. 1277; that thereafter, by fraudulent practices on the part of said defendants and their attorneys employed by them to appear for said Robert Marshall, as plaintiff in said action
232 No. 1277, misrepresentations were made to the court, and by reason of such fraudulent misrepresentations the court conferred the rights of majority on the said Robert Marshall, a minor, as shown by the decree of the court in said action No. 1277; that each and all of said things were done and performed, or caused to be done and performed by each of them with the fraudulent design and intent on the part of said defendants to procure title to said land belonging to said Robert Marshall, a minor, and to procure and receive assignments of oil and gas royalties coming to the said Robert Marshall, a minor, as the proceeds of said land above described.

Ninth. That heretofore, to wit, on the 25th day of October, 1909, said defendants, by fraud, deceit and undue influence, induced the plaintiff to make and deliver to them a Warranty Deed conveying to them said East Half of the Southeast Quarter (S. E. ¼) of Section Thirty (30), and the Northwest Quarter (N. W. ¼) of the Southwest Quarter (S. W. ¼) of Section Twenty-nine (29), Township Eighteen (18) North, Range Twelve (12) East, containing One Hundred and Twenty (120) acres, situate in Creek County, State of Oklahoma; that in said Warranty Deed the consideration is recited to be Ten Thousand Dollars ($10,000.00); that the defendants forthwith, on said October 25, 1909, caused said deed to be filed for record in the office of the Register of Deeds of said Creek County, and the same was recorded in Book 36 at Page 229.

Tenth. That thereafter, to wit, on the 27th day of October, 1909. the defendants, by fraud, deceit and undue influence, induced
233 the plaintiff to make and deliver to them an option contract, wherein and whereby he granted to the defendants, the right and option, for the term of twelve months from said date, to purchase for the consideration of Three Thousand Dollars (3,000.00), said Southwest Quarter of the South east Quarter of Section Twenty-

nine (29), Township Eighteen North and Range Twelve East; and on the date thereof the defendants caused said option contract to be filed and recorded in the office of the Register of Deeds of said Creek County. That for the making and delivery thereof the plaintiff received no consideration whatever.

Eleventh. That concurrently with the making and delivery of said option contract, the defendants, by fraud, deceit and undue influence, induced the plaintiff to make and deliver to them an oil and gas mining lease, for the term of five (5) years, beginning April 13, 1915, reserving to the plaintiff a royalty of one-eighth of the oil produced thereunder. That for the making and delivery of said oil and gas mining lease, the plaintiff received no consideration. That said oil and gas mining lease covers said Southwest Quarter of the Southwest Quarter of Section Twenty-nine (29), Township Eighteen (18) North Range Twelve (12) East.

Twelfth. That the real estate described in said option contract and oil and gas mining lease is of the actual market value of Eight Thousand Dollars ($8,000.00), and on said October 27, 1909, was of such value, and this fact the defendants well knew. That said tract of land is of no practical value except for oil mining purposes.

234 Thirteenth. That the sole and only consideration received by the plaintiff for the making and delivery of the instruments mentioned and described in this amended petition was the following: Five Hundred Dollars ($500.00) in cash paid to him and the delivery of five promissory notes dated November 1, 1909, bearing six per cent. (6%) interest, payable to the plaintiff, signed by the defendants; that said promissory notes are of the following denominations and maturity; one promissory note for $500.00 due and payable six months after date thereof; one promissory note for $500.00 due and payable in twelve months from date thereof; one promissory note for $500.00 due and payable eighteen months after date thereof; one promissory note for $500.00 due and payable twenty-four months after date thereof; and one promissory note for $700.00 due and payable thirty months after date thereof; that all of said notes were by said defendants delivered to the plaintiff, and said notes are now in the custody of the said R. B. Thompson for the plaintiff's use.

Fourteenth. That on October 25th and 27th, 1909, the plaintiff was wholly ignorant of the amount due and unpaid to him on account of the accrued royalty upon said oil and gas mining leases, and the defendants well knew this fact; that the defendants, on the other hand, actually knew the amount thereof and concealed such knowledge from the plaintiff.

Fifteenth. That the defendants and each of them are insolvent, and they have no money or means wherewith to pay said promissory notes except the proceeds to be derived from a disposition of the lands and properties so wrongfully obtained from this plaintiff; that said promissory notes are of no value or worth whatever.

235 Sixteenth. That the fraud, deceit, and undue influence of the defendants which induced him to convey and transfer to them the premises and properties hereinbefore mentioned and described, in addition to what has already been stated, consisted of the following acts on the part of the defendants: That commencing about July 1, 1909, and continuing to and including the 27th day of October, 1909, the defendants and each of them well knowing the infancy, inexperience and mental incapacity of the plaintiff, and his inability to know or understand the nature or effect of the several transactions so had with him on October 25th and 27th, 1909, by a well planned and designed scheme and system, the defendants courted the plaintiff's favor, faith and confidence in them, their honesty and integrity, all with the sole object in view of defrauding and depriving him of his property. That by such practices the defendants, and each of them, completely won the implicit faith and confidence of the plaintiff in them, and such relation existed between the plaintiff and the defendants on said October 25th and 27th, 1909. That immediately before the plaintiff made and delivered to the defendants the several instruments of conveyance hereinbefore mentioned and described, the defendants represented to him that they were solvent, that the bargains so to *ne* made with, him were fair, just and to the plaintiff's best interests; that the defendants thereupon took the plaintiff into their care and custody, keeping him in seclusion, preventing him from communicating or counseling with other persons, except the plaintiff's wife, Ellen Marshall, who is also an infant, and uneducated and inexperienced. That
236 the times of the making and delivery of said instruments of conveyance, the plaintiff believed and relied upon the different and several representations of the defendants and their manifestations of interest in him and solicitude for his welfare, and acted solely upon the advice and counsel of the defendants advising and urging him to make and deliver to them said several instruments as aforesaid.

Seventeenth. That the plaintiff prior to the Commencement of this action rescinded and now rescinds and disaffirms all of the transactions so had with the defendants on October 25th and 27th, 1909, and he offers to restore to the defendants whatever he has received from them on account thereof, and here tenders into court said several promissory notes, and offers to do in the premises whatever the court shall deem just and equitable.

Eighteenth. Plaintiff further alleges that said defendants, and each of them, threaten to, and are about to dispose of said land and make deeds thereto, and assign their rights under said option and under said assignment of oil and gas royalties, and are about to mortgage said property for the purpose of making any judgment and decree of this court ineffectual, and unless enjoined by this court will do so, and the plaintiff asks that this court grant a temporary injunction enjoining said defendants and each of them from in any way disposing of, mortgaging, incumbering or assigning any of said property or any of said instruments pending this action.

237 Wherefore, By said facts said plaintiff prays for a finding of this court that said instruments were procured from said Robert Marshall by fraud and undue influence, and that this court decree that said several instruments and each of them be cancelled and held for naight, and that said defendants and each of them, and every and all persons claiming by, through or under them, or either of them, be forever barred and perpetually enjoined from asserting, setting up or claiming any right, title, estate, equity, interest, lien, claim or demand in and to said property, or any part thereof, or any of the rights accruing therefrom or growing out of said property which said right, title, claim or interest is made under or by virtue of either of said instruments, or any other instrument or conveyance heretofore made, or purporting to have been made by the said Robert Marshall, and that said Robert Marshall be adjudged and decreed to be the absolute owner in fee simple of all of said land, and all the oil and gas royalties due or to become due, and that the cloud upon the title upon the said lands be removed, and that the title in the said Robert Marshall be forever quieted as against said defendants and each of them, and all persons claiming by, through or under them or either of them, and that the plaintiff have all other further and different relief which the court may deem just and equitable. William M. Jenkins, Calaway & McGraw, and Hughes & Miller, Attorneys for Plaintiff.

238 STATE OF OKLAHOMA,
County of Creek, ss:

Bates B. Burnett, of lawful age, being first duly sworn, deposes and says: That he is the legally appointed guardian of Robert Marshall, a minor; that he has read the foregoing amended petition; that the matters and things therein set forth are true to his best knowledge and belief. Bates B. Burnett.

Subscribed and sworn to before me this 11th day of March, 1910. B. H. Tumey, Notary Public. [Notary Seal.] My commission expires Feby. 23, 1914.

239 **LETTERS OF GUARDIANSHIP.**

STATE OF OKLAHOMA,
Creek County:

In the County Court.

In the Matter of the Guardianship of ROBERT MARSHALL, a Minor and an Incompetent Person.

Bates B. Burnett is hereby appointed Special Guardian of the person and estate of Robert Marshall, minor and incompetent person.

Witness Josiah G. Davis Judge of the County Court of Creek County, State of Oklahoma, with the seal thereof affixed, this the

21st day of February, A. D. 1910. Josiah G. Davis, County Judge. [Seal.]

STATE OF OKLAHOMA,
Creek County, ss:

I, Bates B. Burnett do solemnly swear that I will discharge all and singular the duties of guardian of the person and estate of Robert Marshall, minor and incompetent person according to law, and the best of my ability. So help me God. Bates B. Burnett.

Subscribed and sworn to before me, this 21st day of February, A. D. 1910. C. W. Wills, Notary Public. [Seal.] My Commission expires 10/1/1912.

Exhibit "A."

240 Endorsements: No. 1319. Bates B. Barnett, Guardian of Robert Marshall, a minor and incompetent person, Plaintiff, vs. E. M. Arnold, W. W. Hyams, and S. C. Lawson, Defendants. Amended Petition. Received and Filed this 12 of March, 1910. J. B. Summers, District Clerk. By W. Z. Gore, Deputy. E. B. Hughes, Attorney for —— ——.

241 **PLAINTIFF'S EXHIBIT ELEVEN.**

In the District Court in and for Creek County, State of Oklahoma.

No. 1319.

R. B. THOMPSON, as Next Friend of Robert Marshall, an Infant, Plaintiff,
vs.
E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Answer.

Come the defendants, E. M. Arnold, W. W. Hyams and S. C. Lawson and for their answer to the petition of plaintiff filed herein, say:

I.

That the plaintiff R. B. Thompson, who styles himself next friend of Robert Marshall has no legal capacity to maintain this suit, because said R. B. Thompson who is the sole plaintiff herein has no right, title or interest in the property which is the subject matter in this action, and the said Robert Marshall who was at one time the owner of said property has long prior to the institution of this suit had his disabilities of minority removed by an order of the District Court for Creek County, State of Oklahoma, made and entered on

the 25th day of October, A. D. 1909, and was not at the institution of this suit under *and* disability of minority, and might have instituted and maintained any suit relating to or concerning the property which is the subject matter of this action in his own name.

242

II.

For a further and second defence to the petition filed herein, these defendants deny each and every material allegation of said petition not hereinafter specifically admitted.

III.

For a third defence to the petition of plaintiff filed herein these defendants deny that Robert Marshall is an infant sixteen years of age and say that the truth and the fact is that the said Robert Marshall is in his twentieth year, and that on, to-wit: the 25th day of October, 1909, his disabilities of minority were removed by an order of the District Court of Creek County, State of Oklahoma, by an order duly and legally made on said date, in compliance with the statute in such cases made and provided. They admit that he was enrolled as a Freedman citizen of the Creek Nation or tribe of Indians, and that there was allot-ed to him out the lands of said tribe the following real estate, situate in Creek County, State of Oklahoma, to-wit:

The West Half of the Southwest Quarter of Section Twenty-nine (29) and the East Half of the Southeast Quarter of Section — (30), Township Eighteen (18) North, Range Twelve (12) East.

They deny that plaintiff, R. B. Thompson, at the request and for the benefit of Robert Marshall brings this action for and in behalf of said Robert Marshall, and deny that it is for the best interests and the welfare of said Robert Marshall and his estate that this
243 action be commenced and prosecuted, and state the truth and the fact to be that said action is brought and maintained in the interest of other parties than the said Robert Marshall. They admit that said real estate lies in a productive oil field and that it is chiefly valuable for oil, but they deny that it is of the reasonable market value of $20,000, and state that its reasonable market value, considering the uncertainties of the oil business, does not exceed the amount which these defendants have paid for the same. They admit that there is outstanding upon said real estate two (2) oil and gas mining leases, each covering eighty (80) acres of said tract and each bearing a royalty of one-eighth of the gross production of oil produced from said real estate, but as to whether the monthly amount accruing from said royalties amounts to $150.00 a month, these defendants have not sufficient information to form a belief and therefore deny the same and ask that strict proof be required of plaintiff; they state that one of the leases upon said tract of land is to the Orient Oil and Gas Company and covers the Northwest Quarter of the Southwest Quarter of Section 29, and the Southeast Quarter of the Southeast Quarter of Section 30, and that the other

of said oil leases is to the Arkansas Oil and Gas Company and covers the Southwest Quarter of the Southwest Quarter of Section 29, and the Northeast Quarter of the Southeast Quarter of Section 30, and that both of said leases will expire in the month of April, 1915. They deny that the defendants, on the 25th day of October, 1909, or at any other date, by fraud and undue influence, induced Robert Marshall to execute to them a warranty deed conveying to
244 them the East Half of the Southeast Quarter of Section 30, and the Northwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, but they admit that said Robert Marshall did on the 25th day of October, 1909 sell and convey to them and did execute and deliver to them a warranty deed for the 120 acres of land last above described, and that the consideration for said conveyance was actually $10,000, and that said deed has been duly recorded in book 36, at page 229, in the office of the Register of Deeds for Creek County, State of Oklahoma. They deny that concurrently with the execution of said deed on the 25th day of October, 1909, or at any other time, the defendants by fraud and undue influence, induced the said Robert Marshall to deliver to them a pretended assignment conveying to them all oil and gas royalties accruing upon the East Half of the Southeast Quarter of Section 30, and the West Half of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, but they admit that on the 25th day of October, 1909, the said Robert Marshall, for a good and valuable consideration, did convey and assign to said defendants and did execute to them an assignment and conveyance of all the oil and gas royalties accruing upon the East Half of the Southeast Quarter of Section 30, and the West Half of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, and that said instrument was duly filed for record in the office of the Register of Deeds of Creek County, State of Oklahoma, and now appears of record in said office.

245 They admit that the defendant W. W. Hyams, is a licensed and practicing attorney at law, residing at Tulsa, in Tulsa County, Oklahoma, but they feel a delicacy in admitting that all of said defendants are shrewd and experienced land dealers and operators and are thoroughly conversant with the value of the real estate described in the deed of conveyance mentioned in plaintiff's petition, and its worth and value for mineral purposes, and therefore demand that strict proof be required of plaintiff. They deny that Robert Marshall is an illiterate and inexperienced boy, without any knowledge whatsoever of the value of said real estate or its mineral worth or value, and deny that defendant well knew such fact at the time of their dealings with Robert Marshall, and deny that such is the fact. They deny that the sole and only consideration that passed between the defendants and Robert Marshall for the execution of the deed of conveyance and the assignment hereinbefore mentioned, were $500 in cash paid at the time of the execution thereof, by the defendants to Robert Marshall, and the five (5) promissory notes mentioned and set out in plaintiff's petition, but state that the true consideration for said deed of conveyance and

said assignment was the sum of $10,000, of which amount $600 had previously been paid to Robert Marshall, and $400.00 paid at the execution and delivery of said instruments and the five promissory notes mentioned and recited in plaintiff's petition, aggregating the sum of $9,000, which said notes were delivered to said Robert Marshall at the time said deed and assignment were executed and delivered by him to said defendants.

246 They deny that Robert Marshall is or has been entitled to any royalties growing out of the oil and gas mining leases upon the real estate described in the petition, arising and accruing subsequent to October 25th, 1909, and that there is any sum or amount due and unpaid to said Robert Marshall on said account.

They deny that on the 25th day of October, 1909, the date said warranty deed and assignment of oil and gas royalty were executed and delivered, to defendants, by Robert Marshall, said real estate described therein was of the reasonable market value of $15,000, and deny that these defendants or either of them well knew such to be the fact, and deny that such was the fact, and deny that these defendants fraudulently and by way of inducement to secure from the said Robert Marshall the said warranty deed and assignment, approached the said Robert Marshall and represented to him that said real estate and assignment were of the aggregate value of $9,500.00 and no more, and that they took said Robert Marshall into custody and kept him in seclusion and away from intercourse with other people except Ellen Marshall, his wife, and whether said Ellen Marshall is an infant in years they have not information sufficient to form a belief, and therefore deny the same, and ask that strict proof be required of plaintiff, and deny that she is illiterate and wholly ignorant of the character of the land described in said warranty deed and of its value for any purposes, and deny that by the exercise of their superior tact, skill and experience upon said Robert Marshall, they fraudulently and wrongfully and by the

247 exercise of undue influence induced the said Robert Marshall to make and deliver to them said warranty deed and assignment, upon their delivering to him $500 in cash, and the promissory notes in the petition mentioned and recited, but state the truth and the fact to be that said transaction was open, fair and without any undue influence or improper practices of any character or description upon their part. That as a matter of fact, the property which Robert Marshall conveyed and assigned to them was worth no more than was paid for it; that these defendants offered said Robert Marshall the sum of $10,000 for his entire allotment, and all of the interest of every character and description therein, $1,000 of which consideration to be paid in cash and the balance in notes, as mentioned and recited in plaintiff's petition, and that prior to the consummation of said deal, they had paid said Robert Marshall the sum of $600.00, and at the date of the execution of said warranty deed and the said assignment, they paid him the further sum of $400.00, and executed the promissory notes recited in the petition, but that the said Robert Marshall declined to include in said transfer all of his allotment, but reserved therefrom his forty-acre homestead tract,

more particularly described as the Southwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, and on the date of the execution of said deed for the other 120 acres of his allotment and of the assignment of the royalties interest therein, failed to execute or deliver to these defendants any conveyance of, lease upon or other interest in the forty (40) acre homestead tract, but did a few days thereafter as part of the con-
248 sideration for said transaction execute and deliver to these defendants the option contract and the oil lease upon said 40 acre tract in plaintiff's petition mentioned and recited. That the said Robert Marshall had previous to the making of all of said conveyances and previous to entering into contractual relation with these defendants had his disabilities of minority removed by an order of the District Court of Creek County, State of Oklahoma, duly and lawfully made and entered on the 25th day of October, 1909, in compliance with the statute in such cases made and provided. That he had full knowledge of all of the transactions into which he entered with these defendants; that he was not over-reached or defrauded in any manner, and that all of his said contracts were entered into freely and voluntarily and for the consideration herein mentioned and recited, which was a fair and adequate consideration for the property mentioned and described in plaintiff's petition.

The defendants deny that they and each of them are wholly insolvent and have no money or means wherewith to pay said promissory notes or any part thereof except proceeds which they might derive out of the real estate of this infant, and deny that they wrongfully procured him to convey said real estate to them and deny that said notes aside from said real estate are of no value or worth whatsoever, and deny that the only consideration which passed from defendants to Robert Marshall on the execution and delivery of his warranty deed and his assignment of oil and
249 gas royalties was $500.00 in cash and said notes, and deny that said notes are worthless and valueless; and state the truth and the fact to be that the entire consideration for said conveyance and the contracts and instruments executed and delivered to these defendants by Robert Marshall was $10,000, of which $1,000 was paid at and before the execution of said instruments, and the remaining $9,000 in notes as recited in said petition, and that said notes are worth their face value, and that these defendants are all solvent and all have property in the State of Oklahoma, and that each of said defendants is worth in property situated in the Counties of Creek, Tulsa, Muskogee and Wagoner, in the State of Oklahoma, in his own right from eight to ten thousand dollars, and that the defendant, W. W. Hyams, also has property outside the State of Oklahoma worth at a conservative estimate $15,000, and that the total aggregate worth of the three defendants herein, all of whom signed said notes, exceeds $30,000.

The defendants deny that on the 27th day of October, 1909, or at any other time, they by fraud and undue influence procured Robert Marshall to make and deliver to them a pretended option, granting the defendants the option and right for twelve months from the

27th day of October, 1909, to purchase for a consideration of $3,000 the Southwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, and they deny that concurrently with the making and delivery of said option, said defendants by fraud and undue influence procured the said Robert Marshall to make and deliver to defendants a pretended oil and gas mining lease for the term of five years from April 13, 1915, or as long
250 thereafter as oil or gas was found in paying quantities, for a one-eighth (⅛) royalty to Robert Marshall, an oil lease upon the Southwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, and they deny that for the making and delivery by said Robert Marshall to the defendants of said pretended option and pretended oil and gas mining lease no consideration passed from defendants to him, but they say that on or about the 27th day of October, 1909, that is to say, about two or three days after the execution of the deed for the 120 acres, and the assignment of the oil and gas royalties on the 160 acres, Robert Marshall, did execute to these defendants an option for the purchase within 12 months at the price of $3,000 of the Southwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, and also an oil and gas mining lease upon said 40 acre tract, for five (5) years from April 13, 1915, and as long thereafter as oil and gas were produced in paying quantities therefrom, for a one-eighth (⅛) royalty, and that the truth and the fact is that prior to the execution of the warranty deed for the 120 acres and of the assignment of the oil and gas royalties on the entire 160 acres said Robert Marshall had contracted and agreed to convey to these defendants all right, title and interest in and to his entire allotment, including all the mineral rights and royalties for a consideration of $10,000, $1,000 to be paid in cash and the remainder in notes as hereinbefore recited and that after these defendants had pair a portion of said consideration, to wit the sum of about $600.00, he declined to carry out said contract as originally made, and would only execute a conveyance of the 120 acres tract, and
251 the oil and gas royalties upon the entire allotment, and that these defendants were compelled to accept in lieu of an absolute conveyance of the homestead tract, the Southwest Quarter of the Southwest Quarter of Section 29, Township 18 North, Range 12 East, the said option to purchase at a further consideration of $3,000 within 12 months and the oil and gas leases hereinbefore mentioned and recited.

The defendants deny that the 40 acres described in said option is of the actual, marketable value of $5,000, but they admit that the premises described in said option and oil and gas mining lease, to-wit: the 40 acre homestead tract, are of little value except for oil and gas mining purposes. These defendants deny that Robert Marshall at the time he made and delivered to defendants the option and oil and gas mining leases hereinbefore recited, was illiterate and wholly inexperienced in land transactions and had no knowledge whatever of the value of the premises described in said instruments. They admit that these defendants had each of them some experience

as land dealers, but they deny that they were as shrewd, skilled, experienced and thoroughly conversant with said premises and knew the actual value and worth thereof as set out in plaintiff's petition. They deny that on the 27th day of October, 1909, they or either of them approached the said Robert Marshall for the purpose of procuring him to make and deliver to them said pretended option and oil and gas mining lease, and took him into their custody, and were aware of his mental incapacity, and kept him in seclusion, preventing him from counselling or communicating with others as
252 to the value of said premises and the nature and effect of his acts, and that by such fraud and undue influence they induced him to make and deliver to them such instruments, and deny that any fraud or undue influence was used then or at any other time, and state the truth and the fact to be that the contract and agreement between them was made on the 25th day of October, A. D. 1909, was fair, free and open, without any fraudulent practices or devices, without any misrepresentations upon their part; that the said transaction was consummated in the law office of Mann & Jackson in the City of Sapulpa, Creek County, State of Oklahoma; that said Robert Marshall during the course of said dealings and the preparation of the deed for the 120 acres, and the assignment of the royalties, on the entire allotment, went in and out of said office at will, and that several hours elapsed between the beginning of said matter and the conclusion thereof on said date, and that said Robert Marshall visited other parts of the City of Sapulpa during said time, and that the option and oil and gas leases on the 40 acre homestead tract were not executed or delivered until two or three days thereafter, and during all of said intervening time said Robert Marshall was not only not in the custody of these defendants, but was actually absent from them, or either of them, and had every opportunity for consulting or advising with any person or persons he may have seen fit.

The defendants deny that commencing on or about the 1st of July, 1909, and continuing up until the actual making and delivery of the several instruments in plaintiff's petition mentioned, the defendants and each of them well knowing the infancy, inexperience and mental incapacity of the said Robert Marshall to deal with them, or any one, in the matter of the conveyance of said premises or to know
253 the nature and effect of such transactions, by a well designed system and plan, at odd intervals, gave to the said Robert Marshall small presents, courting his favor, friendship and confidence, with the sole object in view of fraudulently defrauding him and depriving him of his interest in the real estate in plaintiff's petition described, and they deny that by such practices and system the defendants and each of them, or either of them, succeeded in winning the absolute faith and confidence of said Robert Marshall in the honesty and integrity of said defendants; that as to whether said Robert Marshall relied on and believed in the honesty and integrity of the defendants and each of them and in the truth of the representations they made to him at the time of the delivery of the instruments mentioned and referred to in plaintiff's petition, they have not knowledge or information sufficient to form a belief, but

they state the truth and the fact to be that no misrepresentation was ever at any time made to the said Robert Marshall. They allege the truth and the fact to be that the first time they or either of them ever had any knowledge whatever of the said Robert Marshall's ownership of the land in question in this suit, the said Robert Marshall approached the defendant, E. M. Arnold, with a proposition to sell him the land mentioned and described in the petition. That said defendant, Arnold, after investigating the situation of affairs, declined to enter into any contract with the said Robert Marshall, but said Robert Marshall did make an agreement with the defendant Lawson sometime during the month of August, 1909, and after the defendant Arnold had declined to make any contract in re-
254 gard thereto for the purchase of said lands, provided said Robert Marshall could secure rights of majority and thereby become entitled in law to make a good and valid conveyance thereof, and pursuant to said agreement did advance to him several hundred dollars in money. That the defendant, W. W. Hyams never had any knowledge of any of said matters until about the middle of October, 1909, some two weeks prior to the actual contract and transfer by Robert Marshall to the defendants in this suit. That after the District Court of Creek County, State of Oklahoma, had made and entered its order conferring majority rights upon the said Robert Marshall, these defendants did on the 25th day of October, 1909, in the Town of Sapulpa, make and enter into a contract with said Robert Marshall for the purchase of his allotment at and for a consideration of $10,000, $1,000 of which was to be paid in money, and out of this sum advances made by Lawson repaid, and the entire 160 acres transferred to these defendants. That after said contract had been made and entered into in good faith by these defendants, the said Robert Marshall declined to convey the 40 acre homestead, but did actually convey the remaining 120 acres and execute the assignment of oil and gas royalties upon the entire allotment as hereinbefore recited, and thereupon the money agreed to be paid was paid and the notes recited in plaintiff's petition were executed and delivered, and two days later the option and oil lease hereinbefore mentioned and recited were executed and delivered by Robert Marshall to these defendants in lieu of an absolute conveyance
255 of the 40 acre tract, as contemplated by the original agreement.

Wherefore, premises considered, these defendants pray that the petition of plaintiff filed herein be dismissed, and that they have and recover of and from the plaintiff all their costs in this behalf laid out and expended. West, Mellette & Jones, Attorneys for Defendants.

State of Oklahoma,
County of Tulsa, ss:

I, E. M. Arnold, having been first duly sworn, upon oath state, that I am one of the defendants in the above entitled suit; that I have read the foregoing answer; that I have personal knowledge of the

matters and things set forth in said answer, and that the statements in said answer contained are true as I verily believe. E. M. Arnold.

Subscribed and sworn to before me this 1st day of December, 1909. Nellie L. Cook, Notary Public. [Seal.] My Commission expires, November 11, 1912.

Endorsements: No. 1319. Answer. West, Mellette & Jones, Attorneys for Deft. Received and filed This 1st day of Dec. 1909. J. B. Summers, District Clerk, by —— ——, Deputy.

256 **PLAINTIFF'S EXHIBIT TWELVE.**

In the District Court in and for Creek County, Oklahoma.

No. —.

ROBERT MARSHALL, a Minor and Infant, by R. R. THOMPSON, His Next Friend, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. C. LAWSON, Defendants.

Answer.

Come now the defendants, and answering the plaintiff's amended petition herein, allege:

(1)

That this cause is not properly maintained by the said Robert Marshall by a next friend, for the reason that the said Robert Marshall was by decree, order and judgment of the above entitled court, duly given, entered and made on the 25th day of October, 1909, adjudged to be competent to make contracts, and to transact his business and affairs, and by the said judgment, order and decree of the said court, then and there duly given, entered and made, it was considered, ordered, adjudged and decreed, that the rights of majority be and were thereby conferred upon the said Robert Marshall, and he was then and there, and thereby authorized and empowered to transact business in general, and to do all acts with reference to his property and contracts relative thereto, with the same force and effect as if done by a person at the age of majority.

257 Wherefore said plaintiff is not authorized to appear by next friend. A copy of said judgment and decree of the said Court so duly given, entered and made, is attached hereto, marked Exhibit A, and made a part hereof.

(2)

Further answering said petition and for a second and further answer thereto, these defendants allege:

That the said plaintiff, Robert Marshall, is a minor and under the age of 21 years, and is without power or authority to disaffirm or rescind any contracts, agreements, or conveyances entered into by him during his minority.

(3)

For a third and further defense to plaintiff's amended petition herein, these defendants deny each and every allegation in said petition contained, except, such allegations as are in this defense specially admitted:

These defendants admit that on the 25th day of October, 1909, the said plaintiff conveyed to these defendants by warranty deed:

The East Half of the Southwest Quarter of Section 30, and the Northwest Quarter of the Southwest Quarter of Section 29, all in Township 18 North, Range 12 East, and situate in Creek County, State of Oklahoma,

but allege that the same was conveyed without fraud, deceit, or undue influence.

These defendants further admit that on the said 25th day of October, 1909, the plaintiff made and delivered to them a written assignment, whereby plaintiff transferred and conveyed to them his right to accrued and accruing oil and gas royalties, accruing out of an oil and gas mining lease mentioned in the petition.

258 Defendants further admit that on the 27th day of October, 1909, the plaintiff made, executed and delivered to them an option contract, wherein and whereby he granted to defendants, all rights and options for the term of 12 months from said day to purchase for the consideration of Three hundred Dollars ($300.00):

The S. W. ¼ of S. E. ¼ of Section 29, Township 18, North, of Range 12 East, United States Survey, in Creek County, Oklahoma.

It is further admitted that the plaintiff, at the time of the making of said option contract, also made, executed and delivered to them an oil and gas mining lease for the term of five years, beginning April 13, 1915, reserving to plaintiff, a royalty of one-eighth (⅛) of the oil produced thereunder, and that said oil and gas mining lease covers said

S. W. ¼ of the S. W. ¼ of Section 29, Township 18, North, Range 12 East.

Wherefore, defendants pray that all their rights under and by virtue of said contracts and agreements and conveyances be confirmed by the Court, and their title and interest in and to said premises as shown by said contract be quieted as against any claims of the plaintiff. Biddison & Campbell, Attorneys for Defendants.

259 **EXHIBIT "A."**

STATE OF OKLAHOMA,
County of Creek, ss:

In the District Court of said County and State.

#1277.

In the Matter of the Petition of ROBERT MARSHALL, a Minor, to Obtain His Right of Majority and the Power to Transact Business in His Own Right.

Order of Court.

Now on this 25th day of October, 1909, being one of the regular judicial days of said Court, the above entitled cause came on to be heard by the court. The petitioner, Robert Marshall, appearing in person, and by his attorneys, and it appearing to the court that due and regular notice of the filing of said petition was duly and legally given and published according to law in the Sapulpa Democrat, a weekly newspaper, printed and generally circulated in said County, and that notice of such publication was duly and legally made in said newspaper for three consecutive weeks, the first publication being on the 19th day of August, 1909, and the last day of publication being on the 2nd day of September, 1909.

The Court therefore finds that due, legal and regular notice was made as prescribed by law, for the hearing of said petition, for the purpose of conferring the rights of majority upon the petitioner, Robert Marshall.

260 The court further finds that the petitioner Robert Marshall, has been a bona fide resident of Creek County, Oklahoma, for at least one year next before the filing of said petition.

The court further finds from the evidence introduced in open court, that your petitioner, Robert Marshall, is over 19 years of age, and that he is competent to make contracts and transact his business and affairs, and the court further finds that your petitioner Robert Marshall is a person of sound mind, and is able to transact his affairs, and that the interests of the petitioner Robert Marshall, will be promoted by conferring the rights of majority upon him; and the court further finds from the evidence introduced that the petitioner Robert Marshall, ought to be empowered to exercise the right of majority for all purposes authorized by law, and as prayed for in said petition.

It is therefore considered, ordered, adjudged and decreed by the Court that the rights of majority be, and the same are, hereby conferred upon the petitioner, Robert Marshall, and he is hereby authorized and empowered to transact business in general and to do all acts with reference to his property and contracts relating thereto with the same force and effect as if said acts were done at the age of majority. W. L. Barniem, District Judge.

Endorsements: No. 1319. Answer to amended petition. Received and filed this 3 of Feb. 1910. J. B. Summers, District Clerk, by —— ——, Deputy. Biddison & Campbell, Attorneys for Defendants.

261 **PLAINTIFF'S EXHIBIT THIRTEEN.**

STATE OF OKLAHOMA,
County of Creek, ss:

ROBERT MARSHALL, a Minor and Infant, by R. B. Thompson, His Next Friend, Plaintiff,

vs.

E. M. ARNOLD, W. W. HYAMS, and S. E. LAWSON, Defendants.

Reply.

I.

The plaintiff for his reply to the first defense set forth in the answer of the defendants says:

That he admits that on the 25th day of October, 1909, by a judgment and decree of the above named court, the rights of majority were conferred upon the plaintiff, empowering him to transact business in general; but he denies that said judgment and decree empowered him to transact the business set forth and complained of in plaintiff's petition herein.

II.

The plaintiff for his reply to the second defense set forth in the answer of the defendants says:

That he denies that he is without power or authority to disaffirm or re-cind the several agreements, contracts and conveyances described in the plaintiff's petition.

III.

The plaintiff for his reply to the third defense set forth in the answer of the defendants herein says:

262 That he denies each and every allegation and averment of new matter therein contained, inconsistent with the allegations and averments set forth in his petition.

Wherefore the plaintiff prays for judgment in accordance with the prayer of his petition. Wrightsman, Bush & Johnson, Thompson & Smith, Wm. Jenkins, & Henry McGraw, Attorneys for Plaintiff.

Endorsements: No. 1319. In the District Court. Robert Marshall, Plaintiff, vs. E. M. Arnold et al., Defendants. Reply. Filed In Open Court 3 Feb. 1910. J. B. Summers, District Clerk.

263 Mr. Brown: Plaintiff rests.
Mr. Davidson: Defendant Tidal Oil Company rests.
Mr. Biddison: The defendant Arnold rests.

The foregoing is all the evidence that was introduced in the trial of this cause.

264 The Court: Gentlemen, in order to get this record straight, let it show that in all matters on which ruling was reserved as to the admission of evidence yesterday, that the objections on the part of the plaintiff and on the part of the defendants are overruled and that exceptions are allowed to the rulings of the Court.

In this case, gentlemen, the petition sets up the fact that Robert Marshall was a creek citizen and that he was allotted the land in controversy in this action by reason of such citizenship. The answers of all of the defendants set up as a defense the judgment that was rendered in this court by which majority rights were sought to be given to Robert Marshall. The answer also sets up a motion to vacate that judgment and the overruling of that motion; and there are attached to the answer certain exhibits; I believe, the deed from Robert Marshall and the lease by Arnold and associates to the two different oil companies and the agreement which was submitted to the County Court, between these parties, one being the guardian of Robert Marshall, and the orders approving these agreements. It seems to me that regardless of any evidence that may have been offered by the plaintiff in this case, it conclusively appears from the pleadings and the evidence of the defendants in this case that, that the application to the County Court for the approval of those leases would indicate, at least to my mind, that the whole proceedings constituted a deliberate and cold-blooded conspiracy to divest this minor of his rights and property. In that application to the County Court there is a recital that this agreement is submitted to the
265 County Court for approval for the express purpose of preventing an appeal to the Supreme Court, whereby the minor's right might have been adjudicated. In that agreement was also a promise by Arnold to pay the taxes on this land, which the evidence in this case discloses he never did. That probably has nothing to do with the decision in this case; but all of it leads me to the conclusion that the question of estoppel does not apply at all. I don't see how the rule of estoppel could be invoked. Even granting it might be, there is absolutely no evidence in this case tending to establish it for the reason that the plaintiff is not claiming under his deed of January, 1916; but it claimed under his deed of October 19, 1916; and the evidence is conclusive that there has been no act on his part that would lead these parties to any expenditures to their detriment.

Judge Biddison requested the Court to make findings of fact in this case. I am unable to discover now where there is any issue of fact in this cause. I don't see any conflict in the evidence. Mr. Brown suggested a finding of fact might be that Robert Marshall was at all times a minor. I think the Act of 1908 establishes that

as a conclusion of law. If you gentlemen desire that I make that finding of fact, I will do so. The Judgment will be that he recover of the defendant Eleanor Arnold and the defendant Tidal Oil Company the value of all the oil, gas and petroleum extracted from these premises, and against the defendant Eleanor Arnold for 3/32 of the value of all the oil, gas and petroleum extracted from
266 the premises since October 19, 1916, together with all equipt-ment on the lease properly a part of the fee.

Judge Brown: How about the question of accounting, if your Honor please?

Mr. Davidson:: To all of which the defendant Tidal Oil Company excepts and gives notice in open court of its intention to appeal to the Supreme Court of Oklahoma, and requests the Court to have the same noted on the proper docket.

The Court: It is so ordered. Do you speak for all of the defendants? Judge Biddison isn't here.

Judge Hardy: Let Mr. Biddison take such exceptions as he wants to.

The Court: As to the accounting, I presume it will be necessary for the court to appoint a referee. The Court will appoint Honorable George T. Pendleton of this Bar referee with instructions to take an accounting and report the same to this court on or before the 15th of September, 1919.

(Mr. Biddison returns into court.)

Mr. Biddison:: Let the same exceptions be made for the Arnolds.

267 [Title omitted.]

JOURNAL ENTRY OF JUDGMENT.

[Filed Nov. 5, 1919.]

Be it remembered, That on the 10th day of July, 1919, this cause came on to be heard by the Court, the plaintiff appearing in person, and by his attorneys, George T. Brown, John G. Ellinghausen and Summers Hardy; the defendant, Tidal Oil Company, appearing by its attorneys, West, Sherman, Davidson & Moore; the defendant, E. M. Arnold, appearing in person and by his attorneys, Biddison & Campbell; and the defendant, Eleanor Arnold, appearing by her attorneys, Biddison & Campbell; and the Court having heard the evidence of plaintiff, and the same being concluded, the defendants, and each of them, demur thereto, and the Court having heard the argument thereon sustained the demurrer of the defendant, E. M. Arnold, and overruled the demurrer of the defendants, Tidal
268 Oil Company and Eleanor Arnold, to which action and motion of the Court the said defendant, Tidal Oil Company and Eleanor Arnold, excepted; that the defendants thereupon offered their evidence, and the cause was continued for further hearing to July 11th, 1919.

That on July 11th, 1919, the cause came on for further hearing by the Court, and was concluded; that the defendant, Tidal Oil Company, thereupon moved the court for leave to amend its petition for the purpose of alleging that it had drilled and completed a number of wells on the land in controversy, at an expense of approximately $18,000.00 between the months of January 1916 and October 1916, and during which said period of time plaintiff, as heretofore alleged, had received and accepted a one-fourth part of the royalty prescribed in the leases under which the defendant company was operating said lands, which motion was by the court sustained and said leave to amend was thereupon granted.

And the court, having heard the argument of counsel, did thereupon announce his findings and conclusions in favor of the plaintiff, and did thereupon overrule all the objections of both parties to the introduction of evidence offered by the respective parties, to all of which the said respective parties and each of them excepted.

And, for its further information, the Court did thereupon appoint Honorable George T. Pendleton, a member of the Bar of this court, as referee, with instructions to qualify as provided by law, and to take an accounting of the oil, gas and petroleum extracted from said premises since October 13, 1916, and report his findings and conclusions thereon, together with the evidence taken before him, to the Court, in writing, on or before the 15th day of Sep-
269 tember, 1919, and that the cause be continued until the coming in of the Referee's report. That the time for filing said report was by the Court extended and continued until September 30, 1919.

And now, on this 30th day of September, 1919, the report of the Referee, together with the evidence taken by him, and his findings and conclusions thereon, came on to be heard, and the court having heard and considered the same, and the objections and exceptions of the defendants thereto, doth sustain, approve and confirm the report of the Referee, to all of which the defendants, and each of them, except.

And being now fully informed and advised in the premises, it is by the court considered, ordered and adjudged:

That the plaintiff, J. P. Flanagan, is the legal and equitable owner of, and entitled to the possession of, the premises described in his petition, to-wit:

The West Half (W. ½) of the Southwest Quarter (S. W. ¼) of Section Twenty-nine (29), and the East Half (E. ½) of the Southeast Quarter (S. E. ¼) of Section Thirty (30), all in Township Eighteen (18) North, Range Twelve (12) East, situate in Creek County, Oklahoma,

and that plaintiff's title thereto, and to every part thereof, is valid and perfect, and superior to any right or interest claimed by defendants, or either of them, and that defendants, or either of them, have no right, title or interest in or to the said premises, or any part thereof.

It is, therefore, by the court considered, ordered and adjudged that the plaintiff, J. P. Flanagan, do have and recover of and from the defendants, Tidal Oil Company and El-eanor Arnold, the possession of the premises hereinbefore de*sub*scribed, and that his title
270 thereto and therein and to each and every part thereof, be and the same is hereby forever quieted and settled as against any and all claims or demands of every nature or kind whatsoever asserted by said -efendants, or either of them, and by any and all persons claiming or to claim the same or any part thereof, by, through or under said defendants, or either of them, and that the deed from Robert Marshall to E. M. Arnold, W. W. Hyams and S. C. Lawson, dated October 25, 1909, and recorded in Book — of the deeds of Creek County, at page —: and that the option contract executed by Robert Marshall on October 27, 1909, and delivered to E. M. Arnold, W. W. Hyams and S. C. Lawson; and that the oil and gas lease executed on May 31, 1910, to the Orient Oil Company by E. M. Arnold, W. W. Hyams and S. C. Lawson; and the oil and Gas lease executed on May 31, 1910, to Arkansas Oil Company by E. M. Arnold, W. W. Hyams and S. C. Lawson; that the judgment rendered by the District Court of Creek County on the 16th day of May, 1910, in cause No. 1319, entitled "Robert Marshall, a minor, an infant by R. B. Thompson, his next friend, and B. B. Burnett, guardian of said Robert Marshall, an incompetent and minor, plaintiff, vs. E. M. Arnold, W. W. Hyams and S. C. Lawson, defendants"; that the agreement entered into by E. M. Arnold on June 30, 1913, with James Harris, guardian of Robert Marshall a minor; that the order of the county court of Creek County in case No. 854, entitled "In the Matter of the guardianship of Robert Marshall, a minor, James Harris, Guardian," made and entered into on July 5, 1913; that the assignment executed by Orient Oil & Gas Company July
12, 1915, assigning and transferring an oil and gas lease to
271 Tidal Oil Company, which assignment and conveyance was also executed C. E. Suppes, and R. L. Davidson; and the assignment dated August 1, 1915, executed by Arkansas Oil Company to Tidal Oil Company, of an oil and gas lease covering a portion of the lands herein involved; and the agreement dated August 29, 1915, entered into between Vance Likely, guardian of Robert Marshall, with defendant, Tidal Oil Company, wherein it was sought to ratify and confirm the lease under which defendant, Tidal Oil Company, held possession of said premises; and the order of the county court of Creek County made and entered on the 24th day of August, 1915, in probate case No. —, entitled "In the matter of the guardianship of Robert Marshall, a minor, and an incompetent, Vance Likely, Guardian;" and each and all of said instruments, orders and judgments, and all other deeds, documents or evidence of title under which defendants, or either of them, claim any interest in and to said land, or any part thereof, be, and the same are all and each of them hereby cancelled, and removed as clouds upon the title of the plaintiff, J. P. Flanagan, in and to said described property, and each and every part thereof.

It is further considered, ordered and adjudged that the plaintiff,

J. P. Flanagan, do have and recover of and from the defendant, Tidal Oil Company, the sum of $108,140.91 being the value of the oil, gas and petroleum extracted from the premises herein described from and since the 13th day of October, A. D. 1916, down to and including August 31, 1919, and that the plaintiff, J. P. Flanagan, do have and recover of and from defendant, Eleanor Arnold, the sum of $10,135.20, being the value of 3-32nds of all the oil, gas and petroleum extracted from said premises since October 13, 1916, down to and including August 31, 1919, together with interest at six
272 per cent per annum on the various installments received from the sale of oil and gas as shown by Exhibits "A" and "B" attached to the report of the referee, and that the said plaintiff, J. P. Flanagan, do have and recover from the said defendants, all the equipment, on said premises, at the date of this judgment, which are properly a part of the fee, to all of which the defendants and each of them except.

And it is further considered, adjudged and ordered that the defendants, Tidal Oil Company and Eleanor Arnold, and each of them, and any and all persons claiming by, through or under them, or either of them, be, and they are hereby, perpetually enjoined and forbidden to claim any right, title, interest or estate in and to said premises, by virtue of said deeds, leases, or other instruments, agreements, orders and judgments, or either of them, hostile or adverse to the title and possession of the plaintiff herein, and said defendants, Tidal Oil Company and Eleanor Arnold, and each of them, and any and all persons claiming by, through or under them, be and they are hereby perpetually enjoined and forbidden from interfering with the plaintiff's right, title to and possession of said premises, or any part thereof, and from setting up any claim or interest adverse to the title of the plaintiff herein, and from interfering with, or disturbing plaintiff in his right to go upon and remain in the peaceable and quiet enjoyment of said premises. And it is further adjudged that the plaintiff have and recover from said defendants, and each of them, all of his costs herein paid, laid out and expended, to all of which the defendants, and each of them, except.

And the several motions of the defendants for a new trial herein having come on to be heard, the Court, upon consideration
273 thereof, overrules each of aid motions, to all of which orders and judgments the defendants, and each of them except, and in open court give notice of an appeal to the Supreme Court of the State of Oklahoma, and request that the proper record thereof be spread upon the minutes of this court, and that the Clerk enter the same on the trial docket thereof, and which is done accordingly.

And for good cause shown, and upon the application of Tidal Oil Company, notice thereof having been given to the plaintiff, the defendants, and each of them, are given and granted an extension of sixty days from this date to make and serve upon plaintiffs a record and case-made for the Supreme Court, the plaintiff to have ten days after service thereof to suggest amendments thereto, said case-made to be signed and settled upon five days' notice by either party.

It is further ordered that the defendants shall have and are hereby granted forty (40) days from this date in which to make and file a supersedeas bond with surety to be approved by the Court Clerk, in the sum of four hundred thousand dollars ($400,000.00), and conditioned as required by law, and it is further ordered that execution of said judgment be stayed pending said period of forty days, and that upon the filing and approval of said bond the judgment herein shall be stayed and superseaded, until the perfecting of said appeal, and thereafter until the final determination thereof.

Done in open court at Sapulpa, Oklahoma, this 30th day of September, 1919. Lucien B. Wright, Judge.

O. K. Geo. T. Brown, Attorneys for Plaintiff.

274 [Endorsement omitted.]

275 [Title omitted.]

MOTION FOR NEW TRIAL.

[Filed July 14, 1919.]

Comes now the defendant, Tidal Oil Company, and moves the Court to vacate and set aside the judgment rendered herein on the 11th day of July, 1919, and to grant a new trial for the following causes that affect materially the substantial rights of said defendant.

1st. Irregularity in the proceedings of the court and the prevailing party and abuse of discretion by which this defendant was prevented from having a fair trial.

2nd. Misconduct of the prevailing party by which this defendant was prevented from having a fair trial.

3rd. Because the decision and judgment is against the evidence and contrary to the weight of the evidence.

4th. Because the decision and judgment is contrary to the law.

5th. Because the court erred in admitting testimony and evidence for the plaintiff over the objection and exception of the
276 defendants.

6th. Because of error of law occurring at the trial and excepted to by this defendant.

7th. Because of error of the court in overruling the demurrer of this defendant to the evidence of plaintiff which was duly excepted to at the time.

8th. Because of error of the court in sustaining objections to the introduction of evidence offered by this defendant and excluding such evidence, to which ruling of the court this defendant duly excepted at the time. West, Sherman, Davidson & Moore, Attorneys for defendant, Tidal Oil Company.

[Endorsement omitted.]

277 [Title omitted.]

MOTION FOR NEW TRIAL.

[Filed Sept. 30, 1919.]

Comes now the defendant, Tidal Oil Company, and moves the court to vacate and set aside the judgment rendered herein on September 15th, 1919, and to grant a new trial for the following causes, which materially affect the substantial rights of said defendant:

1st. Irregularity in the proceedings of the Court and the prevailing party, and abuse of discretion by which this defendant was prevented from having a fair trial.

2nd. Irreglarity in the proceedings before the referee, by which this defendant was prevented from having a fair trial.

3rd. Misconduct of the prevailing party, by which this defendant was prevented from having a fair trial.

4th. Error in admitting testimony and evidence for the plaintiff over the objection of the defendant.

5th. Error of law occur-ing at the trial and excepted to by this defendant.

6th. Error of the Court in overruling the demurrer of this defendant to the plaintiff's evidence, and which was duly ex-
278 cepted to at the time.

7th. Error in sustaining objections to the introduction of evidence offered by this defendant, and in excluding such evidence, and which was duly excepted to at the time.

8th. Error in cancelling and setting aside the deeds, leases, assignments, judgments and judicial orders offered in evidence by this defendant.

9th. Error of the Court in deciding and holding that the amount of the proceeds of the sale of oil and gas produced from the lands in controversy, constitute the value thereof, and was the amount which the plaintiff was entitled to recover.

10th. Error of the Court in refusing to charge the plaintiff with the cost of producing the oil and gas taken from the lands in controversy.

11th. Error of the Court in adjudging and holding that the plaintiff was entitled to the lease equipment, applicances and property upon said lands.

12th. Error in holding and deciding that any portion of the lease equipment, appliances and property was a part of the fee, and in refusing to hold, rule and adjudge what portion of said equipment was properly a part of the fee.

13th. Error of the Court in refusing to hold and decide that the value of the oil and gas in place, was the true rule of damages.

14th. Error of the Court in holding and deciding that the plaintiff had not waived his right to object to the validity of the leases under which this defendant claims the legal right to operate the

lands for oil and gas, and in refusing to hold and decide that
279 the plaintiff had waived and was estopped, by his conduct, from claiming and asserting that this defendant had no interest in said premises, or to the oil and gas thereunder, or to the use and take oil and gas therefrom.

15th. Because the decision and judgment of the Court is against the evidence and contrary to the weight of the evidence.

16th. Because the judgment of the Court is contrary to law. M. Franklin, West, Sherman, Davidson & Moore, Attorneys for Tidal Oil Company.

[Endorsement omitted.]

280 [Title omitted.]

MOTION FOR NEW TRIAL.

[Filed July 14, 1919.]

Comes now the defendant Eleanor Arnold and moves the court to set aside its findings of fact and conclusions of law herein and grant to this defendant a new trial in this cause for the following reasons, to-wit:

First. Error of Law occur-ing at the trial which was duly excepted to by this defendant.

Second. The decision of the court is contrary to law and not sustained by sufficient evidence.

Third. The findings of fact by the court are not sustained by sufficient evidence and are contrary to the evidence.

Fourth. The court erred in admitting irrelevant, incompetent and immaterial evidence over the objection and exception of this defendant and in trying the issue as to the validity of the judgment of this court in the case determinative of this defendant's rights in and to the property in controversy when no issue was made by the pleadings as to the validity of such judgment. Biddison & Campbell, Attorneys for Defendant Eleanor Arnold.

281 [Endorsement omitted.]

282 [Title omitted.]

MOTION FOR NEW TRIAL.

[Filed Sept. 30, 1919.]

Comes now the above named defendant, Elenor Arnold, and moves the court to set aside the report of the referee, George T. Pendl-ton, filed in this cause and the findings of fact and conclusions of law contained in said report, and to grant this defendant a new trial in this cause on the matters referred to by said referee for the following reasons to-wit:

1.

Error of law occurring at the trial before said referee, which was duly excepted to by the defendant at the time.

2.

The findings and conclusions of law of the referee are contrary to law.

3.

The findings and conclusions of law of the referee are contrary to the evidence and *our* not supported by the evidence.

283 4.

The referee erred in admitting irrelevant, incompetent and immaterial evidence over the objection and exception of this defendant, as to the amount of money paid her by the defendant, Tidal Oil Company. Biddison & Campbell, Attorneys for Defendant Elenor Arnold.

[Endorsement omitted.]

284 Be it also remembered That there appears in Clerk's Minute Book Number 5 of the District Court within and for Creek County, State of Oklahoma, at page 2 of said Minute Book, a Minute of the Clerk on the overruling of Motion for New Trial herein; said Minute being in words and figures as follows, to-wit:

285 [Title omitted.]

MINUTE ENTRIES.

[File Sept. 30, 1919.]

Report of Referee filed. Motions of Defendants for New trial overruled. Defendants except and give notice in open court of their intention to appeal to the Supreme Court of the State of Oklahoma, and request that such notice be entered upon the proper records of the court as required by statute, and request time in which to make and serve case-made for appeal to the Supreme Court. Defendants given 60 days in which to make and serve case-made for appeal, 10 days allowed in which to suggest amendments, same to be settled upon 5 days' notice by either party. Supersedeas Bond fixed at $400,000.00, to be filed within 40 days.

286 Be it also remembered That on the same day, to wit: the 5th day of November, 1919 there was filed in the District Court within and for Creek County, State of Oklahoma, and appears

of record in Civil Journal 19 of said court, at page — thereof, in the office of the Court Clerk of said County and State, by the defendant Tidal Oil Company, a Supersedeas bond herein; said Supersedeas Bond together with the endorsements thereon being in words and figures as follows, to wit:

287 [Title omitted.]

SUPERSEDEAS BOND.

[Filed Nov. 5, 1919.]

Know all men by these presents:

That Tidal Oil Company, a corporation, principal obligor, and Frank Haskell and C. E. Hane, as sureties, are held and firmly bound unto J. P. Flanagan, the plaintiff in the above entitled cause, in the sum of Four Hundred Thousand Dollars ($400,000.00), for the payment of which well and truly to be made, we and each of us, do hereby jointly and severally bind ourselves, our successors and *and* assigns.

Dated this 4th day of November, 1919.

The condition of this obligation is such that, whereas, on the 30th day of September, 1919, a judgment was rendered in favor of said obligee, the plaintiff in said cause, and against Tidal Oil Company, the principal obligor, defendant in said cause, for the possession of the West half of the southwest quarter of Section 29, and the East half of the Southeast quarter of Section 30, Township 18 North, Range 12 East, in Creek County, Oklahoma together with the lease equipment upon said premises, and for the sum of $108,-
288 140.91, with interest, as provided in said judgment, and for costs, and,

Whereas, said defendant has taken an appeal from said judgment to the Supreme Court of Oklahoma.

Now, therefore, if the said principal obligor herein shall pay to the said obligee the condemnation money and costs, and during its possession of such property, it will not commit, or suffer to be committed, any waste thereof, and if the judgment be affirmed it will pay the value of the use and occupation of the property from August 31st, 1919, until the delivery of possession pursuant to judgment and all costs, in case the judgment shall be affirmed in whole or in part, or said appeal be dismissed, then this obligation to be void: otherwise to remain in full force and effect. Tidal Oil Company, by Frank Haskell, Vice President, Principal Obligor. Attest: C. E. Hane, Secretary. (Corporate seal of Tidal Oil Company.) Frank Haskell, C. E. Hane, Sureties.

Approved this the 5th day of Nov. 1919. Harrison Arnold, Court Clerk, by J. A. Fulp, Deputy. (Seal of Court Clerk.)

O. K. as to form, when signed by Tidal Oil Co., as Principal and Frank Haskell and C. E. Hane as sureties, without qualifying. Geo. T. Brown.

289 [Endorsement omitted.]

290 [Title omitted.]

STIPULATION OF ATTORNEYS AS TO CASE-MADE.

It is hereby stipulated and agreed by and between the parties hereto that the foregoing case-made contains a full, true, correct and complete copy and transcript of all the proceedings had, all the evidence offered and introduced, all the orders and rulings made and exceptions allowed and all of the record upon which the judgment and journal entries in this cause were made; and that the said plaintiff hereby waives the right to suggest amendments to said case-made and hereby consents that the same may be settled immediately and without notice, and hereby joins in the request of the defendant that the Judge of said court settle the same and order the same certified by the Court Clerk of said County and filed according to law. Geo. T. Brown, Attorney for Plaintiff. West, Sherman and Davidson & More, Attorneys for Defendant Tidal Oil Company. Biddison & Campbell, Attys. for Defendant Eleanor Arnold.

291 [Title omitted.]

[Endorsement omitted.]

CERTIFICATE OF TRIAL JUDGE.

[Filed Jan. 28, 1920.]

I, the undersigned, Judge of the District Court of Creek County, and the trial judge in the above entitled cause, do hereby certify that the foregoing was presented to me for settlement and signing as a case-made in the above entitled action; that all parties by their respective counsel have waived notice and consented that the same may be settled immediately, without amendment, and I now settle, allow, certify and sign the same, as a true and correct case-made in said cause, and do hereby direct that the Court Clerk of said County attest the same with the seal of said court, and file the same of record.

Witness My hand at Sapulpa, Oklahoma, this the 28th day of January, A. D. 1920. Lucien B. Wright, District Judge.

Attest: Harrison Arnold, Court Clerk, by J. A. Fulp, Deputy. [Seal.]

292 [Title omitted.]

JUDGMENT.

[Filed March 28, 1922.]

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be modified and affirmed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby modified by allowing the plaintiff in error credit for $20,310.09 upon the judgment rendered in favor of the defendant in error of $108,140.91, and the judgment as so modified is hereby affirmed. Opinion by Kennamer, J. Harrison, C. J. Johnson, Kane and Nicholson, JJ., concur.

293 [Title omitted.]

OPINION.

Syllabus.

Actions—To Quiet Title—Who May Maintain.—Under c 10 Sess. Laws 1910-11, one not in possession of real property may bring an action for the possession thereof and to quiet title thereto by invoking the jurisdiction of the court to cancel conveyances of record which constitute a cloud upon his title.

Quit Claim Deed—Interest Conveyed.—Under Section 1161 Revised Laws 1910, a quit claim deed conveys all of the right, title and interest of the grantor to the grantee to the premises therein described where such deed is executed in substantial compliance with c 13 Revised Laws 1910.

Indians—Lands—Conveyances.—A conveyance of allotted restricted Indian lands made in violation of a federal statute authorizing the alienation of such lands is against public policy and absolutely void, and in no manner can any right, title or interest in such lands be acquired under such a conveyance.

Indians—Lands—Conveyances—Minor Allottees—Jurisdiction of State Courts.—The district courts of this state are without jurisdiction to enter a valid judgment divesting an Indian minor allottee of title to his allotted lands by entering a decree quieting title in a party asserting title to such lands under void conveyances executed in violation of a federal statute prescribing the manner by which title may be acquired to

such lands. The title to such lands may be acquired only under a regular probate sale as provided for by law.

294

Guardian and Ward—Oil and Gas Lease—County Courts—Jurisdiction.—The county courts of this state have jurisdiction where it is made to appear to be for the best interest of a minor to authorize the guardian to sell an oil and gas lease upon its lands as provided by the applicable statutes and the probate rules of the Supreme Court, but such courts are without power or authority to enter a valid order validating a void oil and gas lease executed in violation of the law.

Estoppel—Elements.—An essential element of estoppel is that the party invoking it must have been misled to his injury by the wrongful conduct of the party against whom it is invoked.

Error from the District Court of Creek County.

Lucien B. Wright, Judge.

Modified and Affirmed.

Action by J. P. Flanagan Against the Tidal Oil Company et al. in Ejectment and to Quiet Title. Judgment for the Plaintiff. Defendants Bring Error.

West, Sherman, Davidson & Moore, Biddison & Campbell, W. C. Franklin, Attorneys for Plaintiffs in Error.

Edw. H. Chandler, Summers Hardy, George T. Brown, B. B. Blakeney, Attorneys for Defendant in Error.

295 KENNAMER, *J.*: This action involves the title to 120 acres of land located in Creek County, Oklahoma, originally allotted to Robert Marshall, enrolled as a Creek Freedman opposite Roll Number 5449. The action was instituted by J. P. Flanagan against the Tidal Oil Company et al. as defendants to quiet title to the lands and for an accounting as to the amount of oil and gas extracted from the lands by the defendants. The plaintiff asserted title to the lands under a general warranty deed dated January 22, 1916, executed by Robert Marshall, the allottee, purporting to convey to him the lands in controversy, and a quite claim deed executed October 13, 1916.

The Tidal Oil Company in its answer admitted the lands in controversy were allotted to Robert Marshall. The execution of the deeds, under which the plaintiff asserted title but denied the plaintiff held the lands adversely to the defendant, Tidal Oil Company, alleged that it, long prior to the purchase of the lands by the plaintiff, was in the actual possession thereof, with the knowledge and consent of the plaintiff, operating the lands for oil and gas under certain oil and gas mining leases set up in the answer.

E. M. Arnold, one of the defendants, disclaimed any interest in the lands.

The answer of Eleanor Arnold, in substance, was the same as the answer of the Tidal Oil Company except she asserted that she was entitled to three-fourths of the royalties due under the leases pleaded by the defendants.

The cause was tried in the district court of Creek County in July, 1919. The trial court at the conclusion of the introduction of the testimony of the plaintiff and the defendants found the issues
296 in favor of the plaintiff; decreed him to be owner of and entitled to the possession of the lands in controversy and that the defendants have no right, title, or interest in or to the lands or any part thereof.

The court appointed a referee to take an accounting of the oil and gas extracted from the premises since October 13, 1916. Ordered that the referee report his findings, conclusions and evidence to the court in writing before the 15th day of September, 1919. On the the report of the referee subsequently filed, the court entered judgment in favor of the plaintiff, Flanagan, for possession of the lands, quieting title in him and for the sum of $108,140.91, as against the defendant, Tidal Oil Company, the value of oil, gas and petroleum extracted from the lands since the 13th day of October, 1916, and for $10,135.20 against the defendant, Eleanor Arnold, the value of 3/32 of all the oil, gas and petroleum extracted from the premises since October 13, 1916.

This appeal is prosecuted by Tidal Oil Company and Eleanor Arnold to reverse the judgment of the trial court, Numerous assignments of error are assigned for reversal of the judgment. The essential facts necessary to be considered to a decision in this cause appear to be as follows: In July, 1909, Robert Marshall, a Creek Freedman, the allottee of the lands in controversy, while a minor fourteen years of age, was married. In October, 1909, the district court of Creek County, entered an order conferring majority rights upon Marshall. After the marriage and the order conferring majority rights upon Marshall he executed an assignment of the oil and gas royalties upon his allotment, a deed to portions of it and an option contract for the sale of the other portions of his land not covered by the deed which he had executed. All of these instruments it is conceded were executed while Marshall was a minor. After the execution of the deed by Marshall attempting to convey portions of his land, the grantees in the deed executed an oil and gas lease upon part of the land to the Arkansas Oil
297 Company and an oil and gas lease to other portions of the land to the Orient Oil and Gas Company, which instruments were assigned to the Oklahoma Oil Company, now the Tidal Oil Company.

The allottee, Robert Marshall, after the execution of these various instruments, filed an action in the district court of Creek County to cancel the conveyances made by him upon his allotment. On the 16th day of May, 1910, the district court of Creek County rendered judgment against him in favor of the defendants in the action,

Arnold, Hyams and Lawson, who were the grantees in the respective conveyances executed by Marshall. A motion was filed to vacate this judgment, which was overruled in June, 1913.

Thereafter on the 11th day of June, 1910, Robert Marshall was by the county court of Creek County declared an incompetent and a guardian appointed for him. After the appointment of a guardian for Marshall, an attempted settlement of the litigation, which had been instituted by Marshall in the district court to recover his allotted lands, was entered into between the guardian of Marshall and the defendants in the action; Under the terms of this settlement the lands were reconveyed to Marshall, but the oil and gas leases executed by Arnold, Hyams and Lawson, after they had received their conveyances from Marshall while a minor, were ratified and confirmed by the guardian of Marshall and the agreement of settlement approved by the county court of Creek county. Marshall, under the compromise settlement, was to receive one-fourth of the royalties accruing upon his lands under the leases which had been executed by Hyams and Lawson.

The guardian of Marshall thereafter on the 24th day of August, 1915, assigned and quit claimed to the defendant, Tidal Oil Company, all the oil and gas mining rights and privileges in and to the lands in controversy reserving to the minor allottee one-
298 fourth of the one-eighth royalties and the remaining three-fourths of the royalties to be paid to Arnold. This contract was approved on the same date by the county court of Creek county.

On January 22nd, 1916, while Marshall was still under guardianship as an incompetent, the plaintiff, Flanagan, in this action purchased the lands from Marshall under warranty deed and it is conceded that this deed is void. It is admitted by the parties that on October 13th, 1916, after Marshall had been discharged from guardianship and had reached the age of majority that he executed to the plaintiff, Flanagan, a quit claim deed conveying to him the lands in controversy.

The first proposition argued by counsel for the Tidal Oil Company and Eleanor Arnold is that Flanagan could not maintain this action to quiet title under Section 4927 Revised Laws 1910, for the reason he was not in the actual possession of the lands on the date of the institution of the action. There is no merit in this contention. This section of the statute, supra, was amended by c. 10 Session Laws, 1910-11, p. 25 which section as amended permits a party to maintain an action to quiet title to real property out of possession by joining it with an action to recover possession. The section of the statute as amended reads as follows:

"An action may be brought by any person in possession by himself or tenant of real property, against any person who claims an estate or any interest therein adverse to him, for the purpose of determining such adverse estate or interest, and such action may be joined with an action to recover possession of such real property by any person not in possession."

This Court, in the case of Koch et al. v. Deere, 50 Okla. 873, 150 Pac., 1102, construed this section of the statute as amended and held that the plaintiff out of possession at the time the action was instituted had a right to bring the action to quiet title and for possession. There is no good reason why this should not be the rule. If a party has title to lands and the lands are in possession of some party without title, the party having the title should
299 have the right to maintain an action to quiet title and for possession against any person asserting an adverse interest to the property. This Court has frequently announced the rule that a lessor, who owns and is in possession of the fee in premises, may maintain an action against an oil and gas lessee, who is in possession of the premises operating the lease, to recover possession and to quiet title thereto: Strange vs. Hicks, 78 Okla. 1; Indiana Oil, Gas and Development Co. v. McCrory, 42 Okla. 136, 140 Pac. 610; Blackwell Oil and Gas Co. v. Whitesides, (Okla.) 174 Pac. 573; Pelham Pet. Co. vs. North, 78 Okla. 39; Paraffine Oil Co. v. Cruce, 63 Okla. 95, 162 Pac. 716.

The second contention made by counsel for plaintiffs in error is that Flanagan purchased the lands under a quit claim deed and took title subject to the rights of the defendants. We readily concur in this contention that Flanagan having become the owner of the lands under a quit claim deed took the title subject to all defects and encumbrances affecting the title of the lands. But we are of the opinion that the instruments and conveyances under which the defendants assert an interest in the lands are absolutely void, and being absolutely void are without any legal effect. No right may be founded on an absolutely void instrument. Conveyances executed and made in violation of a positive statute are void and ineffectual to bind the parties to such contracts. Hunt v. Rawleigh Medical Co. (Okla.) 176 Pac. 410; Missouri Fidelity & Casualty Co. v. Scott, et al. (Okla.) 178 Pac. 122; Brooks v. Watkins Medicine Co. (Okla.) 196 Pac. 956; Cumberland Tel. & Tel. Co. v. The City of Evansville, 127 Fed. Rep. 197; Allen v. The City of Davenport, 132 Fed. 216.

A quit claim deed under Section 1161 Revised Laws 1910 executed in accordance with the statutes applicable to the same
300 conveys all of the title and interest of the maker thereof in and to the lands described in such deed. It is clear that Marshall by his quit claim deed conveyed all of the interest he had in the lands in controversy. Therefore, it necessarily follows that if the conveyances executed by him while a minor and the judgment of the district court of Creek county and the contracts of settlement made by his guardians with the approval of the county court of Creek County are void, that the judgment of the trial court decreeing Flanagan to have the legal and equitable title in and to the lands was correct. It is no longer an open question in this jurisdiction that the marriage of an Indian minor will not operate to remove the disabilities of minority so as to vest it with power to convey its allotted lands. It is also settled that the district courts

of this state are without jurisdiction to enter an order conferring majority rights upon an Indian minor vesting such minor with authority to convey its allotted lands: Jefferson v. Winkler, 26 Okla. 653, 110 Pac. 755; Tirey v. Darneal, 37 Okla. 606, 133 Pac. 614; Bell v. Fitzpatrick, 53 Okla. 574, 157 Pac. 334; McKeever v. Carter, 53 Okla., 360, 157 Pac. 56; Allison v. Crummy, — Okla. —, 166 Pac. 691; Crow v. Hardridge, — Okla., —, 175 Pac. 115; Smith v. Williams, 190 Pac., 555.

We have no difficulty in arriving at the conclusion that the judgment of the district court of Creek County in the action instituted by Robert Marshall had no jurisdiction to divest Robert Marshall of title to his allotted lands by a decree quieting title in the defendants in the action. The title of the defendants was based upon absolutely void conveyances made and executed by Robert Marshall while a minor, as disclosed by the enrollment rec-
301 ords. Furthermore, it appeared from the pleadings filed in the action instituted by Marshall in the district court of Creek County, that the lands were the allotment of an Indian minor. Therefore, it is clear the district court of Creek County was without jurisdiction to convey the lands to the defendants by a decree purporting to quiet the title of the defendants. The record disclosed that the defendants had no title to be quieted. This situation placed the lands, the subject of the action, beyond the jurisdiction of the district court of Creek County to enter a judgment, the effect of which was to alienate the lands for the minor allottee. It appearing on the face of the pleadings in the action instituted by Robert Marshall against the defendants, Arnold et al., that the lands involved in the action were the allotted lands of an Indian minor allottee and that the allottee was still a minor, who had never been divested of his title to the lands in a regular probate proceeding as prescribed by law, it is plain, that the district court of Creek County was without jurisdiction to enter a judgment which in effect divested such minor allottee of title to the lands, thereby affecting an alienation of the lands in a manner unauthorized by law. Such a judgment was an attempt to divest the minor allottee of his property without due process of law.

The Supreme Court of the United States, in the case of Scott vs. McNeal, 154 U. S. 32, 38 L. ed. 896, in an opinion delivered by Mr. Justice Gray, held:

"No judgment of a court is due process of law if rendered without jurisdiction in the court."

In the case of Scott v. McNeal, supra, the court held the appointment of an administrator upon the estate of a person, who in fact was alive, and the sale of his property by such administrator was absolutely void for the reason that the court was without jurisdiction to appoint an administrator over the estate of a live person.

The reason for the rule is, that a court cannot enter a valid
302 judgment in a cause where it has no jurisdiction of the

subject of the action. Pennoyer v. Neff, 95 U. S. 714, 24 L. ed. 565.

In the action by Marshall against Arnold, et al., had there been an issue poined as to whether Marshall was of age at the time of the execution of the conveyance to the defendants and there had been an adjudication by the court upon the trial of the action upon a bona fide issue as to his age, and the court had determined that Marshall was an adult on the date of the execution of the conveyances, such a decree unappealed from, not reversed or vacated in the manner provided by law, would be res adjudicata upon the issue. But the pleadings of the respective parties in the action by Marshall disclosed that the lands in controversy were at the time of the rendition of the judgment, the allotted lands of an Indian minor who had never been divested of his title in the manner prescribed by law.

Under Section 6 of the Act of Congress May 27th, 1908, 35 Statutes at Large, the persons and properties of minor allottees of the Five Civilized Tribes are subject to the jurisdiction of the probate courts of Oklahoma, and by Section 2 of said Act it is specifically provided who are minors as used in the act which include males under the age of twenty-one years and females under the age of eighteen years.

It has been the uniform holding of this court that the minority imposed upon Indian allottees within the age prescribed in Section 2 of the Act, supra, is in the nature of a restriction on the alienation of such allottees' lands, and title can only be acquired to such lands by a regular probate proceeding had in accordance with the statutes in the proper county court of the state. Any deed, instrument, or contract by which an interest in such lands is attempted to be conveyed not executed in accordance with the law authorizing such conveyances is in violation of the law, therefore, contrary to
303 public policy, absolutely void and ineffectual as a basis of title by estoppel or otherwise. Collins Inv. Co. v. Beard, 46 Okla. 310, 149 Pac. 840; Bell v. Fitzpatrick, 53 Okla. 574, 157 Pac. 334; Brewer v. Dodson, 60 Okla. 81, 159 Pac. 329; Brewer v. Perryman, 62 Okla. 176, 162 Pac. 791; Truskett v. Closser, 198 Fed. 835; Priddy v. Thompson, 204 Fed. 955; Barbre v. Hood, 228 Fed. 658; Truskett v. Closser, 236 U. S. 223, 59 L. ed. 549;

Counsel for the plaintiff in error very earnestly insist that although the judgment of the district court of Creek County quieting the title to the lands in Arnold, Hyams and Lawson be void that this fact does not invalidate the compromise settlements between the guardian of Robert Marshall and Arnold approved by the probate court of Creek County. In support of this contention counsel cites the rule announced in 8 Cyc. 505, as follows:

"The rule is well settled that an agreement or compromise is supported by a sufficient consideration where it is in settlement * * * of a claim which is disputed or where it is in settlement of a claim which is doubtful."

Many other authorities are cited in support of this rule.

We have no fault to find with this rule of law, but the rule has no application to the facts in the case at bar. The guardians of Marshall and Arnold, Hyams and Lawson, in entering into the compromise agreements were attempting to make agreements conveying an interest in restricted allotted Indian lands. Such lands may not be conveyed or title acquired except in the manner prescribed by law.

Counsel in the oral argument, or in the brief, have not pointed out any statute authorizing the title or an interest in such lands to be acquired in the manner as disclosed by this record.

304 It is true, the guardian of an incompetent or minor may lease the lands of his ward for oil and gas purposes in the manner prescribed by law and under the rules of this Court which have been held to have the force and effect of a statute where the same is not in conflict with a statute. Winona Oil Company v. Barnes (Okla.) 200 Pac. 981; Carlile et al v. National Oil & Development Co. et al. (Okla.) 201 Pac. 377. Our attention has not been directed to any statute authorizing the making of such compromise agreements as the record discloses were entered into in the instant case.

In the case of Goodrum v. Buffalo, 162 Fed. 817, the Circuit Court of Appeals for the Eighth Circuit, held:

"* * * that any and all schemes and devices resorted to for the purpose of acquiring title to the Indian allotments during the period of such litigation are abortive and this for the palpable reason that it is a period of absolute disability on the part of the Indian to alienate his land."

In the case of Goodrum v. Buffalo, supra, the question involved was the validity of a judgment rendered in an action brought by an Indian to recover his allotment, the judgment being rendered upon an agreed statement of facts against the Indian. The court held that the judgment was not a bar or an estoppel against the Indian afterwards recovering his lands in an ejectment action. The court in the opinion said:

"If the Indian could create no estoppel against himself or herself by deed of conveyance, how could he or she create an estoppel by consenting to a judgment as the basis of an estoppel, effectual to alienate the land in direct contravention of the Act of Congress * * *

"The diability of these Indians is imposed by statute. It must, therefore, logically and necessarily follow that the record and judgment of a court, disclosing on their face that the disqualified Indian was entering into an agreement for submision of the question of his right to dispose of these lands, was in nowise different from such a proceeding participated in by a minor infant. It is a wholesome rule of law that a party may not accomplish by indirection that which he could not do directly. * * *

305 "It should be understood once for all that no scheme or device, however ingenious or plausable, concocted by any per-

son, can avail to divest the Indians of the title to their allotted lands within the period of limitation prescribed by Congress."

Parties in deaing with restricted Indians with respect to restricted allotted lands will not be permitted to secure conveyances in violation of applicable statutes prescribing the manner by which such lands may be alienated and then institute litigation and made compromise agreements with reference to such fraudulent and void transactions in furtherance of a scheme to acquire title to such lands in a manner not authorized by law. Such a course of conduct if sanctioned by the courts would permit parties with impunity to defeat the very purpose of legislation enacted by the Congress for the protection of such Indian allottees.

The authorities cited by counsel supporting the rule that a guardian may release and compromise pursuant to the authority of the probate court suits of his ward and compound or release a debt due his ward, in no way conflict with the rule announced in the case of Goodrum v. Buffalo, supra, and adherred to herein. The cases cited by counsel supporting the rule as announced in 21 Cyc. p. 74 ordinarily have application to cases where the guardian has in good faith, under the direction and approval of the probate court, settled and compromised a bona fide controversy involving personal property, such as the collection of a debt, but none of the cited cases have any application to controversies involving restricted Indian lands.

It is insisted that in Markham v. Duggar, 126 Pac. 190, the court held that such a judgment as was rendered by the district court of Creek County in the action between Marshall and Arnold et al., is valid, and the Tidal Oil Company, having acquired its leases subsequent to this decision, had a right to rely upon
306 the rule as announced in the case. That a rule of property was established by the decision. We have examined the case of Markham v. Dugger and we do not believe it sustains the contention made by counsel for the plaintiffs in error.

Commissioner Ames, speaking for the court in Markham v. Dugger, supra, said:

"There is no dispute about the court having had jurisdiction of the persons of both parties. There is no dispute about the court having had jurisdiction of the subject-matter. * * *"

It is clear no question of jurisdiction was raised in the case. This Court is committed to the rule that no rule of property may exist to render valid conveyances made in violation of a statute of a governmental policy. Gannon v. Johnston et al. 40 Okla. 694, 243 U. S. 108, 61 L ad. 625.

Plaintiff in error invokes the doctrine of estoppel against the defendant in error. This rule is invoked because Flanagan, after receiving his first deed January 22nd, 1916, accepted one-fourth of the royalties due under the leases of the Tidal Oil Company, and until October 13th, 1916, when he received his quit claim deed. It is insisted he acted inconsistent with his present attitude. The evi-

dence discloses that Flanagan, prior to the time he procured his quit claim deed from the allottee, Marshall, notified the Tidal Oil Company that its title in the lands was defective and he suggested that all interested parties take steps to secure title to the lands. The Tidal Oil Company refused to take any steps towards procuring a better title than it had to the lands. The fact that both the Tidal Oil Company and Flanagan were unlawfully in possession of the allotment of Marshall prior to October 13, 1916, and as disclosed by the record naked trespassers upon the land, and that one of the trespassers, Flanagan, discovered that the lands were being unlawfully occupied by them, can in no way preclude Flanagan from purchasing the outstanding title. In this situation, it is clear
307 that the fact that he jointly with the Tidal Oil Company unlawfully occupied the lands prior to the date of the execution of his quit-claim deed, which conveyed to him the legal title to the lands, does not constitute an estoppel against Flanagan in an action for the possession of the lands. The very essence of an estoppel is that a person claiming its benefits must have been induced to do the thing he did do, or to have altered his situation relying upon the conduct of the party against whom the doctrine is invoked. Williamson-Halsell-Frasier Company v. King, 58 Okla. 120, 158 Pac. 1142; Condit. v. Condit. (Okla.) 168 Pac. 456; Bragdon v. McShea, 26 Okla. 35, 21 C. J. 1129. No action of Flanagan's is suggested which caused the Tidal Oil Company to change its position to its injury. We find no facts in the record upon which an estoppel may be invoked.

Both parties to this action contend that the equities are on their side of the controversy. Upon a careful review of the record, we are of the opion that very little equity exists in favor of either party to this action, and our conclusion is arrived at strictly upon the legal questions presented. Quite a different question might be presented if Marshall, the allottee of the lands, was a party to this action seeking to avoid the conveyances of both parties upon equitable grounds.

Counsel for the plaintiff in error insist that the trial court erred in refusing to permit them to show what the total cost of production of all of the oil produced by them under their lease. The Tidal Oil Company, one of the plaintiffs in error, was not entitled to show the total cost of a production during the entire time it occupied the lands under its lease. The trial court only decreed the defendant in error was entitled to the value of the oil produced since the date of
308 his quit claim deed October 13, 1916, and under the rule announced in Barnes v. Winona Oil Company, 200 Pac. 981, and Zelma Oil Company et al. v. Nemo Oil Company et al., (Okla.) not yet officialy reported, the plaintiff in error was entitled to an offset against the judgment, the costs of operating the premises from October 13, 1916, to the date of the judgment. The record discloses this amount to be $20,310.09.

We conclude that the judgment of the trial court should be modified by allowing the plaintiff in error credit for $20,310.09 upon

the judgment rendered in favor of the defendant in error of $108,-140.91. The judgment of the trial court as modified is affirmed. Harrison, C. J. and Johnson, Kane and Nicholson JJ., concur.

309 [Title omitted.]

ORDER EXTENDING TIME.

[Filed Apr. 8, 1922.]

And now on this April 8, 1922, it is ordered by the court that plaintiff in error be allowed 30 days from April 12, 1922 to file petition for rehearing in the above cause.

310 [Title omitted.]

ORDER EXTENDING TIME.

[Filed May 9, 1922.]

And now on this day it is ordered by the court that plaintiff in error be granted 10 days additional time to file petition for rehearing in the above cause.

[Title omitted.]

ORDER EXTENDING TIME.

[Filed June 6, 1922.]

And now on this day it is ordered by the court that defendant in error be given 15 days to file response to petition for rehearing in the above cause.

311 [Endorsement omitted.]

[Title omitted.]

PETITION OF TIDAL OIL COMPANY FOR A REHEARING.

[Filed May 16, 1922.]

Comes now the plaintiff in error, Tidal Oil Company, and moves the court to grant it a rehearing in the above entitled cause, upon the following grounds, and for the following reasons, to-wit:

1. Because the court, in deciding and holding that the cause should be determined according to the strict legal rights of the parties, not only departed from the issues presented, but assumed the existence of facts not disclosed by the record. If the assumption by the court in its opinion that the deed of January 22, 1916, from Robert Marshall to J. P. Flanagan was void because Marshall was then under

guardianship as an incompetent is correct, the statement that Flanagan acquired title under his deed of October 13, 1916, after Robert Marshall had been judicially restored to competency is wholly groundless and without foundation.

312 2. Because if Robert Marshall was under guardianship as an incompetent on the 22nd day of January, 1916, there is no evidence whatever in the record, and no attempt to prove, that he was ever restored to competency, by reason of which the deed of October 13, 1916, was also void, and therefore the defendant in error never acquired title to the lands and property involved in this suit.

3. Because the statement in the opinion of the court, to-wit, "it is admitted by the parties that on October 13, 1916, after Marshall had been discharged from guardianship and reached the age of majority, he executed to the plaintiff, Flanagan, a quit claim deed conveying to him the lands in controversy," is not based on the record, nor is there anything in the brief of plaintiffs in error, nor was there anything stated in the oral argument of the cause, to justify this statement of the court. On the contrary, the assertion of counsel for plaintiffs in error at the oral argument that, if Robert Marshall was in fact under guardianship as an incompetent when he made his deed of January 22, 1916, there was nothing in the record to show his restoration to competency at the time of the execution of the deed of October 13, 1916, was not denied, and counsel for defendant in error expressly stated in his argument and in answer to a question by one of the justices of this court, that he was not prepared to refute such statement of counsel for plaintiffs in error. Tidal Oil Company, therefore, says that the statement of the court in its opinion that it had admitted the restoration of Robert Marshall to competency prior to the execution of his deed of October 13, 1916, is wholly without foundation in fact.

4. The court in its statement that the plaintiffs in error contended that Flanagan could not maintain this action for the reason that he was not in actual possession of the land, has misconceived

313 their contention and argument in this respect, the contention of the plaintiffs in error being that as *both* Flanagan and Tidal Oil Company were in possession and occupying the lands jointly, and the said Tidal Oil Company not being out of possession and clouding the title with an unasserted claim, but asserting and exercising its right and title by the actual operation of said lands for oil and gas under the leases in evidence, the plaintiff was not authorized to maintain the statutory suit to quiet title, and in this connection the court has overlooked, or has not considered, the authorities on this point cited in the brief for plaintiffs in error.

5. Because the court is wholly mistaken in the conclusion expressed in the opinion that the judgment of the District Court of Creek County divested Robert Marshall of title to his allotted lands, the plaintiffs in error having made no contention or claim that such court had power to divest a citizen of the Creek Nation of his title to his restricted allotment, their contention being that the judgment of the said District Court upon the issues joined between

the parties, after a full hearing, was a valid exercise of judicial power, and that its judgment was not void for want of jurisdiction, but was valid and binding until vacated, reversed or modified on appeal or otherwise, and the court has overlooked or failed to consider the controlling decisions and authorities cited and quoted from in support of this contention.

6. The decision of the court that the County Court of Creek County was without power to adopt the leases made by Arnold, Hyams and Lawson, as the act of the court and its officer, the guardian of the allottee, because it was an attempt to approve a conveyance of restricted lands in violation of law is erroneous, for the rule
314 thus announced would deprive the court of its exclusive power, both under the state and federal statutes, to manage a minor's estate. It further erroneously assumes that a conveyance of lands in violation of federal restrictions was contemplated, the only conveyance involved being a conveyance to, and not from Robert Marshall. If Marshall's title had never been lawfully divested, the county Court had the power to lease his allotment for oil and gas, and the court fails to consider or pass upon the contention of the plaintiffs in error that the guardian of Robert Marshall, especially with the title to his allotted lands revested in him of record, had, with the approval of the County Court, the same power to adopt as his act and the act of the court an oil and gas lease already in existence, as he had, with like approval, to make the same lease originally, there being no statute nor rule of court prohibiting it, and that such jurisdiction could only be attacked for fraud or unfairness to the minor in fixing his royalty interest at one-thirty-second of the oil saved and produced instead of the usual one-eighth, and which objection Flanagan could not be heard to urge, under the decisions cited in the brief for plaintiffs in error, which the court has overlooked or failed to consider.

7. Because the court, in holding that the Tidal Oil Company's leases grew out of a violation of a positive statute of the United States and of the policy of Congress with reference to Indian lands, and in holding that no rights could be founded on such a transaction which could be the subject of recognition, failed to discriminate between transactions in violation of the rights of the public, and transactions of the character here involved, which relate to
315 private property, and has overlooked the cases cited in the brief of plaintiffs in error on this point, and also the case of Hartman v. Butterworth Lumber Co., 199 U. S. 335, to which the court's attention was called in the oral argument, and which holds that although a contract made in viola ion of the public policy of the United States and forbidden by a federal statute, is void, yet such contract is capable of conferring rights and of recognition, if not inherently vicious or immoral, which doctrine was approved and applied by this court in Henley v. Davis, 156 Pac. 337.

8. Because, if the court is right in holding that the validity of the leases of Tidal Oil Company depended on the validity or invalidity of the judgment of the District Court of Creek County, and if the court is right in holding that the judgment of the County

Court of Creek County adopting and approving the leases under which the Tidal Oil Company has been operating the lands, then, in holding such judgments to be void for want of jurisdiction, the court has failed to consider the claim of the Tidal Oil Company, that it acquired vested rights under said leases under the prior decisions of this court, adopting a different construction of the controlling statutes, and of which rights Tidal Oil Company cannot now be deprived without violating the obligations of its contract, and depriving it of its property without due process of law, and the court has overlooked the following controlling decisions on this subject, to-wit:

Gelpoke v. Debuque, 1 Wall., 175;
Muhlker v. N. Y. etc. Railroad Co., 197 U. S., 544;
Louisiana v. Pilsbury, 105 U. S., 278;
Hollinshead v. Von Glahm, 4 Minn., 131;
Pittsburgh Iron Co. v. Lake Superior Iron Co., 76 N. W., 402.

316 9. Because the court, in holding that Tidal Oil Company cannot be heard to plead the acts and conduct of the defendant in error as an estoppel on his part to assert the invalidity of the oil and gas leases for the reason that the company was not misled thereby to its injury, has overlooked not only the retention of royalties by Flanagan but the uncontradicted evidence in the case that while Flanagan was accepting royalties under such leases, the company drilled, with his knowledge and consent, four wells on the land, at a cost of eighteen thousand dollars, of which Flanagan has been given the benefit without compensation, and has further failed to notice, consider or pass upon the contention of Tidal Oil Company, that, apart from the question of strict estoppel, the defendant in error selected his own ground and waived his rights if he had any to assail the validity of the leases and cannot now recall such waiver or place himself in a different position, and the court has overlooked or failed to consider the authorities cited by plaintiffs in error in their brief in support of such contention.

10. Because the court erroneously refused to decide this cause from the standpoint of a court of conscience and improperly ignored the fact that the suit of Flanagan was for equitable relief, and was an appeal to the moral sense of the chancellor and was not an action at law to assert his purely legal right to the property, in which the plaintiffs in error would have had a right to a trial by jury.

11. Because the fact having appeared that Flanagan was without equity in connection with the transaction forming the basis of his suit, and which the court in its opinion found to be true, and the evidence having disclosed that he was guilty of fraud and unrighteous conduct in the purchase of the land from his grantor,
317 and of unfair dealing with the Tidal Oil Company in taking and retaining royalties to which he now says he knew he had no right, and in permitting it to further develop the land at its expense, without objection by him, and in pretending and claiming to be the legal and equitable owner of the property, while, at the same time surreptitiously negotiating for a new deed under which he in-

tended, not only to assert the invalidity of his own title, which he was by his conduct holding out as valid and perfect, but to assail the title of the Tidal Oil Company which he was repeatedly recognizing in the unconditional acceptance of royalties, and other conduct, it was the duty of the court under the principles and practice of equity, to have refused the relief prayed for, regardless of the equities or rights of the plaintiff in error, Tidal Oil Company; that in permitting the defendant in error to go into a court of equity with confessedly unclean hands and receive from the chancellor as a reward for his unrighteous and fraudulent conduct, valuable property for which he paid practically nothing, and compelling by its decree the surrender of such property to him by the Tidal Oil Company, has not only sanctioned and approved the plaintiff's conduct in this case, but has announced a doctrine wholly at variance with long established principles.

12. Because the announcement of the court that it would decide this case on the legal principles involved, proceeds upon the erroneous and wholly unwarranted assumption that it had the right to disregard the appeal to its moral sense and its equitable jurisdiction, and is based on the further erroneous assumption that the defendant in error had title under his deed of October 13, 1916, but not under his deed of January 22, 1916, when as a matter of fact, the defendant in error apparently relied on his deed of January 22, 1916, as
318 it was pleaded and proven as the source of his title, and the deed of October 13, 1916, was not offered in evidence at the trial.

13. Because if, as the court intimates, and which is a necessary result of its conclusion, the allottee, Robert Marshall, has the right to have the conveyances of both parties set aside in equity, then Flanagan and Tidal Oil Company are each of them wrongdoers in respect to the property and have no rights therein, as against Robert Marshall, and the decision of the court which compels the delivery of property to, and requires an accounting of its use in favor of, a wrongdoer, is in violation of every rule and principle of either law or equity, and places the Tidal Oil Company in a position in which it may have also to account for the same property to the true owner.

14. Because, if as the court finds, the rights of Robert Marshall are affected, he is materially interested in, and is an indispensable party to, the suit, so that there may be a full and complete decree, binding on all interested parties, the performance of which may be made perfectly safe to those who are compelled to obey it, and if the court should adhere to its opinion as to the rights of the respective parties and to retain jurisdiction of this cause, the same should be remanded in order to bring in the necessary parties in order to avoid further litigation in which the Tidal Oil Company may be decreed to account again for the same property. Respectfully submitted, Owen & Molony, W. C. Franklin, Y. P. Broome, W. P. McGinnis, West, Sherman, Davidson & Moore, Attorneys for Plaintiff in Error, Tidal Oil Company.

319 [Title omitted.]

[Endorsement omitted.]

PETITION OF ELEANOR ARNOLD, PLAINTIFF IN ERROR, FOR A REHEARING.

[Filed May 16, 1922.]

Comes now, Eleanor Arnold, Plaintiff in Error, and petitions the court to set aside its decision heretofore rendered in this cause, and grant her a rehearing and respectfully submits that the court in rendering its decision, overlooked certain propositions decisive of the case, as follows:

First. The court decided that all the proceedings affecting the oil lease under which plaintiffs in error claimed the right to produce oil and gas from the lands involved, were void, because the original deed from Robert Marshall to W. W. Hyams and E. M. Arnold, was void and that it was not possible to ratify that void deed or a lease made under it.

The court also decided that the first deed taken by the defendant in error, Flanagan, from Robert Marshall, in January, 1916, was void but overlooked the proposition that a quit claim deed, taken by defendant in error from Robert Marshall in October, 1916, for a consideration of One Dollar ($1.00) for the purpose of perfecting his title, was void, for the reason that it was based on the original void deed, and the consideration paid for it was so inadequate that a court of equity in good conscience cannot uphold it.

Second. The court in its opinion stated: "We are of the opinion that very little equity exists in favor of either party to this action, and our conclusion is arrived at strictly upon the legal questions presented."

The court overlooked the proposition that this is an equity suit and that the court is called upon to quiet Flanagan's title to the lands and to cancel all leases and deeds and to give him an
320 accounting of all of the oil and gas taken out of the land since October, 1916. This is not a legal action and a court of equity cannot do otherwise, when it finds there are no equities on either side, but to leave the parties where it finds them. If the court is of the opinion that Robert Marshall may have an action against all of these people, it cannot, as a court of equity, require plaintiffs in error to pay the defendant in error One hundred eighteen Thousand ($118,000) Dollars, where defendant in error's title cost him but "one dollar and other good and valuable considerations," where nothing in the evidence or pleadings indicate what the other good and valuable considerations were.

Third. The court decided that there was no element of estoppal sufficient to estop Flanagan from disputing the right of plaintiffs in error.

The court overlooked the proposition presented in brief of plaintiffs in error, that Flanagan, by his dealings with the plaintiffs in error, and accepting the royalties, ratified or adopted the lease under which they were operating, making it his own and that ratification or adoption is a widely different thing from estoppal.

Fourth. The court, in holding that the actions of Robert Marshall and of his guardian and the proceedings in the courts were void and could not be ratified, overlooked the proposition that there was nothing so illegal or immoral in the proceedings, that Robert Marshall, on becoming competent, could not ratify or that his grantee, Flanagan, could not ratify.

The original allotment acts provided that allottees could not sell their lands within a certain time, and that any conveyance or contract made contrary to those provisions were void and not susceptable for ratification, and that no rule or estoppal would ever prevent the assertion of their invalidity. The Act of April 26, 1906, provided that a deed given to carry into effect former void contract or deed, was void, but the Act of May 27, 1908, which our courts have universally held since its passage, that it was a complete act, superseding all other Indian Acts applying to Indian land, con-
321 tained no such provision and our courts have held since that time that deeds given to carry into effect a former void deed or contract, was not void, but valid. Biddison & Campbell, Attorneys for Plaintiff in Error, Eleanor Arnold.

322 [Title omitted.]

ORDER SETTING CAUSE FOR ARGUMENT.

[Filed Sept. 26, 1922.]

And now on this day it is ordered by the court that the above cause be set for oral argument on petition for rehearing on Oct. 3, 1922.

[Title omitted.]

SUBSTITUTION OF McNEILL, J., FOR MILLER, J.

Mr. Justice J. R. Miller announced his disqualification to sit in the above cause, and left the bench, Mr. Justice N. E. McNeill, sitting in his stead.

And now on this day the above cause is argued orally and submitted on the record, briefs, petition for rehearing and oral argument.

323 [Title omitted.]

ORDER DENYING PETITION FOR REHEARING.

[Filed Oct. 17, 1922.]

And now on this day it is ordered by the court that the petition for rehearing filed in the above cause be, and the same is hereby denied.

[Title omitted.]

ORDER STAYING MANDATE.

[Filed Oct. 19, 1922.]

And now on this day it is ordered by the court that the mandate in the above cause be stayed pending appeal to the Supreme Court of the United States.

[Endorsement omitted.]

324 [Title omitted.]

SECOND PETITION OF TIDAL OIL COMPANY FOR A REHEARING.

[Filed Nov. 10, 1922.]

Comes now the plaintiff in error, Tidal Oil Company, and leave having been first had and obtained, files this its second petition for a rehearing herein, and asks the court to reconsider its decision and ruling of this court embodied in its opinion heretofore filed herein, and to grant a rehearing on the following grounds, to-wit:

I.

The Court has failed to pass upon and decide the claim made by Tidal Oil Company, and which claim it now reasserts, viz: That in the purchase from Orient Oil & Gas Company on July 2, 1915, and from Arkansas Oil Company on August 1, 1915, of the lease executed to them as lessees by E. M. Arnold and his asso-
325 ciates on May 31, 1910, and April 1, 1910, respectively, and under which leases it went into possession, and continued the development and operation of the land in controversy, for oil and gas, said Tidal Oil Company acquired a vested right of property of which it could not be deprived except by due process of law; that the Court in its opinion holds and decides to be void for want of jurisdiction the judgment rendered by the District Court in and for

Creek County, Oklahoma, on May 18, 1910, wherein Robert Marshall, the allottee of the land, was plaintiff, and the said E. M. Arnold and his associates were defendants and by which judgment the title of said E. M. Arnold and his associates in and to said land was quieted, and which said judgment has never been vacated or modified on appeal or otherwise, which said decision of the Court so holding and deciding said judgment to be void is contrary to the rule of law as announced by the court in Markham v. Dugger, 123 Pac. 190, and Wiley v. Edmonson, 133 Pacific 338, and which was the rule of law applicable to such judgments at the time Tidal Oil Company purchased an assignment of the lease contracts, the validity of which is involved in this cause, and upon which rule of law it relied in purchasing said leases and which became a part of its contract of purchase; that the said rule of law remained in force and effect as the law of this state applicable to and governing the question of the finality and validity of such judgments until the said rule of law was changed by decision of this court in Bell v. Fitzpatrick, decided on February 28, 1916, and by which decision the court announced a change in the rule of law applicable to such judgments and the said cases of Markham v. Dugger and Wiley v. Edmonson were overruled.

326 We claimed and urged upon the court at the original hearing that

"Tidal Oil Company purchased and paid for said leases prior to the decision of Bell v. Fitzpatrick, and at a time that this Court had announced and declared a contrary doctrine as the law, and it is therefore entitled to protection of its vested rights acquired under the law as then declared."

The Tidal Oil Company claimed and now claims, that the decision in this cause is repugnant to the Constitution of the United States in that it operates to divest it of its rights, and to impair the obligations of its contract, created and acquired prior to the change in the rule of law on the subject.

II.

The Court, in its opinion, also holds and decides to be void for want of jurisdiction, the judgments and orders of the County Court of Creek County, approving the reconveyance of the land by E. M. Arnold on June 30, 1913, to the allottee, Robert Marshall, subject to the leases theretofore executed by him to Orient Oil & Gas Company and Arkansas Oil Company, and by which judgments and orders of the said County Court the said leases were expressly adopted and approved and became thereby valid and enforceable contracts and subsequent to which judgments and orders of said County Court Tidal Oil Company purchased said leases and thereby acquired a vested right to take the oil and gas from said lands subject to the royalty reserved by said leases; that the Court in its opinion holds and decides that the law as announced in the cases of Winona Oil

Company v. Barnes, 200 Pacific 981, and Carlile v. National
327 Oil & Development Company, 201 Pacific 377, is applicable to the instant case and that under said decisions the County Court of Creek County was without authority under the statutes of the state to approve a lease without submitting the same for bids at a public sale, although such a construction of the statutes was announced for the first time in said cases of Winona Oil Company v. Barnes and Carlile v. National Oil & Development Company, the prior decisions of this court, to-wit:

Spade v. Morton, 38 Okla. 384;
Cowles v. Lee, 128 Pac. 688;
Cabin Valley Mining Company v. Hall, 158 Pac. 170;
Eaves v. Mullen, 107 Pac. 433;
Duff v. Keaton, 124 Pac. 291,

having announced and adopted a different construction of the statutes, to-wit: so construing said statutes as to authorize a County Court to direct a private sale of an infant's lands or a lease thereof without the necessity of submitting the same to competitive bidding at public sale or auction; that such was the law prevailing at the date of the judgments and orders of the County Court of Creek County approving such leases and at the time of the contract of purchase by Tidal Oil Company of the said leases, and that a contrary construction of the statutes as announced by the court in its opinion in the instant case is repugnant to the Constitution of the United States in that it operates to divest Tidal Oil Company of its rights, and to impair the obligations of its contracts created and acquired under a different construction of the statutes and prior to the change in such construction by the opinion in said cause.

In its petition for rehearing in this cause the Tidal Oil
328 Company urged as one of the grounds therefor the following:

"Because, if the court is right in holding that the validity of the leases of Tidal Oil Company depended on the validity or invalidity of the judgment of the District Court of Creek County, and if the court is right in holding that the judgment of the County Court of Creek County adopting and approving the leases under which the Tidal Oil Company has been operating the lands, then, in holding such judgments to be void for want of jurisdiction, the court has failed to consider the claim of the Tidal Oil Company that it acquired vested rights under said leases under the prior decisions of this court, adopting a different construction of the controlling statutes, and of which rights Tidal Oil Company cannot now be deprived without violating the obligations of its contract and depriving it of its property without due process of law, and the court has overlooked the following controlling decisions on the subject, to-wit:

Gelpoke v. Dubuque, 1 Wall. 175;
Muhlker v. N. Y. etc. Railroad Co., 197 U. S. 544;
Louisiana v. Pilsbury, 105 U. S. 278;
Hollinshead v. Von Glahm, 4 Minn. 131;
Pittsburgh Iron Co. v. Lake Superior Iron Co. 76 N. W. 402."

The Court has wholly failed to pass upon the question so urged, or to decide upon the validity of the claims as made by Tidal Oil Company.

III.

Upon the question of estoppel which Tidal Oil Company pleaded and urged upon the Court, viz: That J. P. Flanagan, the plaintiff below, could not be heard to assail the validity of the leases because by accepting payment of the royalties prescribed therein, i. e. the land owner's share of the oil reserved in the lease contract, he had adopted said leases as his own act as this Court decided in Capps v.
329 Henley, 100 Pacific 515, and that his acts and conduct in that respect, continuing for a period of seven months prior to the institution of this suit, was wholly inconsistent with a purpose to dispute the validity of such leases and that he thereby waived that right as this Court had decided in Scott v. Signal Oil Company, 35 Okla. 173, all of which said decisions were cited to the Court in the oral argument of this cause and in the argument upon the petition for rehearing. The Court in denying the petition for rehearing in which Tidal Oil Company urged that J. P. Flanagan, for the reasons stated, could not be heard to question the validity of the leases so adopted and recognized by him, has adhered to its opinion that Flanagan may be heard to dispute the claims of Tidal Oil Company because there can be no ratification of the lease contracts on the ground that they arose out of a violation of a positive statute of the United States and of the policy of Congress with reference to Indians and their allotted lands. On this point Tidal Oil Company urged that such contracts, even if void for the reasons stated, were capable of conferring rights, and of recognition by Flanagan as the grantee of Robert Marshall, unless the same were inherently vicious or immoral, as decided by the Supreme Court of the United States in Hartman v. Butterworth, 199 U. S. 335, and which doctrine was approved by this Court in Henley v. Davis, 156 Pacific 337. The Court has failed to notice or pass upon this contention or the cases cited in support of it. Unless the Court means to overrule, or to change the rule of law announced in Capps v. Henley and Scott v. Signal Oil Company, or to hold that a void oil and gas lease contract is incapable of recognition, or of conferring any rights which may be the subject of recognition, Tidal Oil Company re-
330 spectfully insists that it is entitled to an express ruling on the questions presented as necessary to a decision of said cause. Respectfully submitted, Thos. H. Owen, W. C. Franklin, Y. P. Broome, J. C. Wilhoit, W. P. McGinnis, West, Sherman, Davidson & Moore, Attorneys for Plaintiff in Error Tidal Oil Company.

331 [Title omitted.]

ORDER DENYING SECOND PETITION FOR REHEARING.

[Filed Nov. 10, 1922.]

And now on this Nov. 10 1922 it is ordered by the court that leave to file second petition for rehearing in the above cause be granted, said petition is filed, and it is ordered by the court that said petition for rehearing be overruled and denied.

332 [Title omitted.]

[Endorsement omitted.]

PETITION FOR WRIT OF ERROR.

[Filed Nov. 18, 1922.]

To the Honorable John B. Harrison, Chief Justice of the Supreme Court of Oklahoma:

Now come Tidal Oil Company and Eleanor Arnold, Plaintiffs in Error, and represent that on 28th day of March, 1922, a judgment was entered by the Supreme Court of the State of Oklahoma, affirming the judgment and decree of the District Court of Creek County, Oklahoma, in a suit in Equity pending in said court wherein J. P. Flanagan was plaintiff, and Tidal Oil Company and Eleanor Arnold were defendants, and by which said judgment and decree of the District Court certain oil and gas mining leases owned by plaintiffs in error were adjudged to be null and void and were vacated and set aside, and a certain judgment of the District Court of Creek County, Oklahoma, rendered May 16, 1910, in favor of the defend-
333 ants therein, and certain judgments of the County Court of Creek County, Oklahoma, approving the said oil and gas mining leases, were also vacated and set aside, and held to be null and void, and by which judgment and decree the plaintiffs in error were declared to be trespassers upon the lands embraced in said leases, and that the defendant in error, J. P. Flanagan, was entitled to possession of said land and to a judgment against the defendants in said suit in the sum of One Hundred Eighteen Thousand Two Hundred Seventy-six Dollars and Eleven Cents ($118,276.11); that petitions for re-hearing were filed by the plaintiffs in error in said Supreme Court and that the same were overruled by said court, the last petition for re-hearing having been overruled on November 10, 1922, and that thereby the judgment of said Supreme Court became final.

And your petitioners averred, and contended in the trial of said cause and upon their appeal from said judgment to the said Supreme Court that, said judgment, by vacating the said leases of Tidal Oil Company, and denying its right and title acquired by virtue thereof,

under the judgment of the District Court of Creek County of May 16, 1910, and the orders and judgments of the County Court of Creek County, Oklahoma, amounted to, and enforcement thereof constituted, a taking of its property without due process of law, and in violation of the Constitution of the United States, and your petitioners further contended that said holding and judgment of the said court was contrary to the rule of law previously announced by said Supreme Court in its prior decisions, and which remained in force and effect as the rule of law in said state of Oklahoma
334 governing the effect, validity and finality of such judgments until the said rule of law was changed by a decision of said Supreme Court on February 29, 1916, and long after the said Tidal Oil Company had acquired, by contract of purchase, the said oil and gas mining leases; and your petitioners further contended that the holding and judgment of the said Supreme Court in deciding that the holding and orders of the County Court of Creek County, Oklahoma, approving the leases thereafter acquired by said Tidal Oil Company, under a contract of purchase from the lessees therein, was contrary to the prior decisions of said court and the rule announced thereunder, and was contrary to the construction of the governing and controlling statutes announced in prior decisions of said court, and under which the said Tidal Oil Company made its contract of purchase, and which remained the rule of law in said state of Oklahoma governing the effect, validity and finality of such judgments until said rule was changed by a decision of said court on May 10, 1921, and long after the said Tidal Oil Company had, by contract of purchase, acquired said leases, and all of which operated to divest Tidal Oil Company of its rights by virtue of said contract of purchase, and to impair the obligations of its said contract, acquired under a different and contrary rule of said Supreme Court, and under a different and contrary construction of the controlling and governing statutes.

But nevertheless the Supreme Court of Oklahoma affirmed the judgment and decree of the District Court of Creek County, Oklahoma, and held and decided that said judgment did not deprive Tidal Oil Company of its property, without due pro-
335 cess of law, nor divest it of rights of property acquired under prior decisions of the court, nor impair the obligations of its contracts, but decided that the said Tidal Oil Company was without right, either legal or equitable, in the premises, and decreed that it deliver possession to J. P. Flanagan, the defendant in error, of the lands, minerals, and mineral rights therein.

And your petitioner avers that in the aforesaid judgments and proceedings errors were committed to the prejudice of the petitioners, all of which will more fully appear from the assignment of errors which is filed herewith.

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this case to the Supreme Court of Oklahoma for the correction of errors so complained of, and that a transcript of the record, proceedings and

papers in this cause, duly authenticated by the clerk of the Supreme Court of the State of Oklahoma may be sent to the Supreme Court of the United States as provided by law.

Dated this 18th day of November, 1922. Preston C. West, A. A. Davidson, W. C. Franklin, Thos. H. Owen, A. J. Biddison, Attorneys for Petitioners and Plaintiffs in Error.

336 [Title omitted.]

[Endorsement omitted.]

ORDER ALLOWING WRIT OF ERROR.

[Filed Nov. 18, 1922.]

On reading the petition of Tidal Oil Company and Eleanor Arnold for writ of error, and the assignment of errors, and upon due consideration of the record of said cause;

It is ordered that a writ of error be allowed from the Supreme Court of the United States to the Supreme Court of the State of Oklahoma, as prayed for in said petition, and that said writ of error and citation thereon be issued served and returned to the Supreme Court of the United States in accordance with law, upon condition that the said petitioners and plaintiffs in error give security in the sum of One Thousand ($1,000.00) Dollars that the said plaintiffs in error shall prosecute said writ of error to effect.

It is further ordered, the sureties therein consenting, that the bond for Four Hundred Thousand ($400,000.00) Dollars
337 heretofore given and approved as a supersedeas bond on the appeal in said cause from the District Court of Creek County, Oklahoma, to the Supreme Court of Oklahoma, and conditioned for the payment by the plaintiffs in error of the condemnation money and costs, and that said Tidal Oil Company during its possession of said property, will not commit, or suffer to be committed, any waste, and if the judgment be affirmed, that it will pay the value of the use and occupation of the property until the delivery of possession pursuant to judgment, and all costs, be and the same is hereby accepted and considered as a supersedeas bond herein, and that the allowance of said writ of error shall be conditioned that said bond of Four Hundred Thousand ($400,000.00) Dollars be deemed as security for all damages and costs as therein provided, that may accrue pending a final determination of said cause on writ of error to the Supreme Court of the United States, as well as all damages and costs, as provided therein, accruing from the date of the original judgment in said cause.

In witness whereof, I have hereto set my hand this 18th day of November, 1922. J. T. Johnson, Acting Chief Justice of the Supreme Court of Oklahoma.

Attest: Wm. M. Franklin, Clerk of the Supreme Court of Oklahoma, By Jessie Pardoe, Deputy. [Seal of Supreme Court, State of Oklahoma.]

338 [Title omitted.]

[Endorsement omitted.]

WRIT OF ERROR.

(Filed Nov. 22, 1922.)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity in the said state, in which a decision could be had in the said suit, between Tidal Oil Company and Eleanor Arnold, and J. P. Flanagan, wherein was drawn in question the validity of contracts of purchase by Tidal Oil Company of certain oil and gas mining lease contracts, and the validity of said contracts under which it took possession of certain mining property and operated the same for oil and gas, and the decision was against the validity of
339 said contracts, although the same, as plaintiffs in error contend, were valid under the rule of law announced in prior decisions of the said Supreme Court in effect at the time of the Tidal Oil Company's purchase of said leases, and which rule of law was changed by a decision of said court subsequent to the date of such purchase; wherein was also drawn in question the construction of certain statutes governing the subject matter of the controversy in said suit, and by which construction of said statutes the Tidal Oil Company was held to have no right, title or claim to the minerals or mineral rights in the lands included in said lease contracts, although, as plaintiffs in error contend, upon a different construction of said statutes announced in prior decisions of the Supreme Court, the said Tidal Oil Company had acquired a vested right of property in and under said lease contracts, and in and by its contract of purchase thereof, the change in the construction of said statutes by said court having been announced by a decision of this court subsequent to the date of such purchase, a manifest error hath happened to the great damage of said plaintiffs in error as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf do command you that a judgment be therein given, and that then under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things compiling the same, to the Supreme Court of the United States, together with this writ, so that you have the

same in the said Supreme Court of Washington within
340 thirty days from the date thereof, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable W. H. Taft, Chief Justice of the United States, the 18th day of November, 1922, in the year of Our Lord One Thousand and Nine Hundred and Twenty-two. Arnold C. Dolde, Clerk of the District Court of the United States for the Western District of Oklahoma. [Seal of the United States District Court, Western District of Oklahoma.]

Allowed by J. T. Johnson, Acting Chief Justice of the Supreme Court of the State of Oklahoma.

Attest: Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma. By Jessie Pardoe, Deputy. [Seal of Supreme Court, State of Oklahoma.]

341 [Title omitted.]

[Endorsement omitted.]

ASSIGNMENT OF ERRORS.

(Filed Nov. 18, 1922.)

Now come Tidal Oil Company and Eleanor Arnold, petitioners and plaintiffs in error, and in connection with their petition for a writ of error show, that in the record and proceedings, and in the rendering of the judgment and decision of the Supreme Court of Oklahoma, in the above entitled cause, manifest error has intervened to the prejudice of these petitioners and plaintiffs in error, in this, to-wit:

I.

The court erred in holding and deciding to be null and void, and affording no protection to the plaintiffs in error contracting
in reliance thereon, the judgment of May 16, 1910, ren-
342 dered by the District Court of Creek County, Oklahoma, in an action wherein Robert Marshall, the original owner of the land herein involved, was plaintiff, and E. M. Arnold and others were defendants, and by which said judgment the said defendants were adjudged to be the owners of said land, the said judgment being held void on the ground that the said District Court, although conceded to have had jurisdiction of the parties and of the subject matter, had no jurisdiction under the Acts of the Congress of the United States, to decide against the plaintiff in such action, because the land was allotted to him as an enrolled freedman of the Creek Nation of Indians.

II.

The court erred in deciding against the asserted claim of said Tidal Oil Company that in the purchase of its oil and gas mining leases, executed by the record owner of the land, and adjudged to be such owner by a District Court of the state of Oklahoma, and under which leases it took possession and operated said land for oil and gas, said Tidal Oil Company, under the rule of law that such a judgment of the said court was valid, acquired a vested right of property of which it could not be deprived by a change in such rule of law.

III.

The court erred in deciding against the asserted claim of said Tidal Oil Company that in the purchase of its oil and gas mining leases after their adoption and approval by the County Court of Creek County, Oklahoma, being the court having probate jurisdiction in the premises, and under which leases it took possession and operated said lands for oil and gas, said Tidal Oil Com-
343 pany, under the construction of the applicable statutes recognizing the jurisdiction and authority of county courts of the state of Oklahoma to approve such leases, acquired a vested right of property of which it could not be deprived by a change in such construction of the statutes.

IV.

The court erred in deciding said cause against the plaintiffs in error on the ground that the judgment rendered by the District Court of Creek County, Oklahoma, on May 16, 1910, in an action between Robert Marshall, the allottee of the land herein involved, and E. M. Arnold and his associates, and by which judgment the title of said E. M. Arnold and his associates in and to said lands was quieted, was beyond the jurisdiction of the court rendering the same, which said decision is contrary to the rule of law theretofore announced by said court in its prior decisions, to wit: that said judgments were valid until reversed, vacated or modified, and which was the rule of law applicable to such judgments at the time said Tidal Oil Company purchased an assignment of the lease contracts, the validity of which is involved herein, and upon which rule of law it relied in purchasing said leases, and which became a part of its contract of purchase, and which rule of law was not changed by said Supreme Court until February 29, 1916, by a decision of that date, and subsequent to the time at which the rights of Tidal Oil Company were acquired and became vested under its contract of purchase of said leases, and that the decision complained of is repug-
344 nant to the Constitution of the United States in that it operates to divest Tidal Oil Company, without due process of law, of its rights under said lease contracts and its purchase thereof, and to impair the validity of its said contracts entered into prior to the change in the rule of law on the subject.

V.

The court erred in holding and deciding to be void for want of jurisdiction, the judgments and order of the County Court of Creek County, Oklahoma, being the court having jurisdiction of the person and estate of Robert Marshall, the allottee of the land, approving the reconveyance of such land on June 30, 1913, by E. M. Arnold to the said Robert Marshall, subject to the oil and gas mining leases theretofore executed by him, the said Arnold, subsequent to May 16, 1910, the date of the judgment adjudicating his title thereto, and by which judgments and orders of the said County Court acting under the laws and constitution of the state, the said leases were expressly adopted and approved, and became thereby valid and enforceable contracts, and subsequent to which judgments and orders of the said County Court, Tidal Oil Company purchased said leases and thereby acquired a vested right to take the oil and gas from said land; that the court erred in deciding that the law, as announced in the case of Winona Oil Company vs. Barnes, 200 Pacific 981, decided May 10, 1921, and Carlile vs. National Oil & Development Company, 201 Pacific 377, decided May 13, 1921, was applicable, and that under said decisions the County Court of Creek County, Oklahoma, was without authority under the statutes of the
345 state to approve a lease without submitting the same for bids at a public sale, although the prior decisions of said court had announced and adopted a different construction of said statutes, that is to say, so construing said statutes as to authorize the county court to direct a private sale of a lease of an infant's land without the necessity of submitting the same to competitive bidding at a public sale or auction, and that such construction of the statutes was the law prevailing upon the date of the judgments and orders of the County Court of Creek County approving said leases, and at the time of the contract of purchase by said Tidal Oil Company of the said leases, and that a contrary construction of the statutes as announced by the court in its opinion operates to divest Tidal Oil Company of its rights, without due process of law, and to impair the obligations of its contracts entered into under a different construction of the statutes and prior to the change in such construction by its later decisions.

VI.

The court erred in denying the claim pleaded, asserted and maintained by Tidal Oil Company, namely that the said J. P. Flanagan took his title to the land subject to the oil and gas mining leases thereon, and could not be heard to assail the validity of said leases and the rights of the plaintiffs in error thereunder, because, after his purchase of the land from the allottee, Robert Marshall, he had demanded and accepted payment of the royalty prescribed by said leases, that is to say, the land owner's share of the oil reserved in said lease contracts, and that he thereby accepted said leases as his

own act with the same effect as if he had executed the same,
346 and that his acts and conduct in that respect, continuing for a period of seven months after the said purchase, and prior to the institution of this suit, were wholly inconsistent with a purpose to dispute the validity of such leases.

VII.

The court erred in holding and deciding that the said J. P. Flanagan was not estopped, by his acts and conduct, to dispute the validity of said oil and gas mining leases, on the ground that said leases arose out of a violation of a statute of the United States and of an Act of Congress, with reference to Indians and their allotted lands, and in denying the claim asserted by Tidal Oil Company that such contracts, even if void for the reasons stated, were capable of conferring rights and of recognition by the said J. P. Flanagan, inasmuch as said contracts were not inherently vicious or immoral.

VIII.

The court erred in vacating, annulling and setting aside the judgment rendered by the District Court of Creek County, on May 6, 1910, and the orders and judgment of the County Court of Creek County of July 5, 1913 and August 24, 1915, the said judgment so vacating and annulling such judgments and orders being beyond the issues in the cause before the court, and which said judgment deprived the plaintiffs in error of vested rights of property acquired by virtue of said judgment and orders without due process of law.

IX.

The court erred in holding and deciding that J. P.
347 Flanagan had proven a cause of action against the plaintiffs in error and erred in deciding that he was entitled to relief in a court of equity.

X.

The court erred in refusing upon petition for rehearing by plaintiffs in error, to decide and determine certain questions presented by plaintiffs in error for such decision and determination, namely, whether the rights of Tidal Oil Company under its oil and gas mining leases acquired under a rule of law announced in prior decisions of the said court under a construction of the controlling statutes as announced in former decisions of the said court, could not be divested by later decisions, and after such rights were acquired, announcing a different rule of law and adopting a different construction of such statutes, and, conceding the oil and gas mining leases to be void for the reasons stated in the opinion of the court, whether such leases were capable of adoption and recognition by the defendant in error as the owner of the land, and whether he did, as plaintiff in error claimed and contended, so adopt and recognize such

leases so as to give them effect and validity even if originally void, and, by which refusal and by overruling said petition for re-hearing, the decision of the court is against the claim so made by the plaintiffs in error.

By reason whereof, the petitioners and plaintiffs in error pray that the said judgment of the Supreme Court of Oklahoma may
348 be reversed and judgment rendered in favor of plaintiffs in error, and for their costs.

Dated this 18th day of November, 1922. Preston C. West, A. A. Davidson, Thos. H. Owen, W. C. Franklin, A. J. Biddison, Attorneys for Plaintiff in Error.

349 [Title omitted.]

[Endorsement omitted.]

BOND.

[Filed Nov. 22, 1922.]

Know all men by these presents: That Tidal Oil Company, a corporation, as principal, and Charles E. Hane, as surety, are held and firmly bound unto J. P. Flanagan in the sum of One Thousand ($1,000.00) Dollars, for the payment of which well and truly to be made we bind ourselves jointly and severally by these presents.

Sealed with our seals and dated this 20th day of November, 1922.

Whereas, the above named plaintiff in error, Tidal Oil Company, has sued out a writ of error from the United States Supreme Court to the Supreme Court of Oklahoma to reverse the judgment of the said Suppreme Court of Oklahoma rendered on the 28th day of March, 1922, in the suit of Tidal Oil Company and Eleanor
350 Arnold against said J. P. Flanagan.

Now, therefore, the condition of this obligation is such that, if the above named plaintiffs in error shall prosecute the said writ of error to effect and answer all costs and damages, if they shall fail to make good their plea, then this obligation is to be void; otherwise to remain in full force and effect. Tidal Oil Company, by C. E. Hane, Vice President, Principal. C. E. Hane, Surety.

Appproved this 22nd day of November, 1922. Jno. B. Harrison, Chief Justice of the Supreme Court of Oklahoma.

Attest: Wm. M. Franklin, Clerk of the Supreme Court of Oklahoma, by Jessie Pardoe, Deputy. [Seal Supreme Court, State of Oklahoma.]

We hereby agree to Charles E. Hane as sufficient surety upon the above bond, this 20th day of Nov. 1922. Edw. H. Chandler, Summers Hardy, Attys. for J. P. Flanagan.

351 [Title omitted.]

[Endorsement omitted.]

CITATION AND SERVICE.

[Filed Nov. 22, 1922.]

UNITED STATES OF AMERICA, *ss:*

To J. P. Flanagan, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from the date of the service of this citation, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of Oklahoma, wherein Tidal Oil Company and Eleanor Arnold are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

352 Witness the hand of the Honorable, the Chief Justice of the Supreme Court of the United States this 18th day of November, 1922, in the year of Our Lord One Thousand Nine Hundred and Twenty-two. J. T. Johnson, Acting Chief Justice of the Supreme Court of Oklahoma.

Attest: Wm. M. Franklin, Clerk of the Supreme Court of Oklahoma, by Jessie Pardoe, Deputy. [Seal Supreme Court, State of Oklahoma.]

We, the undersigned, attorneys of record for J. P. Flanagan, defendant in error, do hereby accept service of the foregoing citation this 20th day of November, 1922. Edw. H. Chandler, Summers Hardy, Attorneys for J. P. Flanagan.

353 [Title omitted.]

[Endorsement omitted.]

PRAECIPE FOR RECORD.

[Filed Dec. 19, 1922.]

To the Clerk of the Supreme Court of the State of Oklahoma:

Please include in the transcript in the above entitled cause on writ of error from the Supreme Court of the United States the following portions of the record in said cause and no other:

1. Petition of plaintiff in error to the Supreme Court of Oklahoma.
2. The following portions of the casemade and no other:

(*a*) Petition of plaintiff, J. P. Flanagan.
(*b*) Answer of the defendants Tidal Oil Company and Eleanor Arnold.
(*c*) Response of plaintiff to answer of defendants.
(*d*) Evidence and testimony heard at the trial in the District Court.
354 (*e*) Judgments and decree of the District Court.
3. Opinion of the Supreme Court of Oklahoma.
4. All petitions for re-hearing.
5. All orders of the Supreme Court thereon.
6. Petition for writ of error.
7. Order allowing writ of error.
8. Writ of error.
9. Assignment of errors.
10. Bond on writ of error.
11. Citation with service.
12. This præcipe.
13. Certificate of clerk. West, Sherman, Davidson & Moore, Biddison & Campbell, Attorneys for Plaintiff in Error.

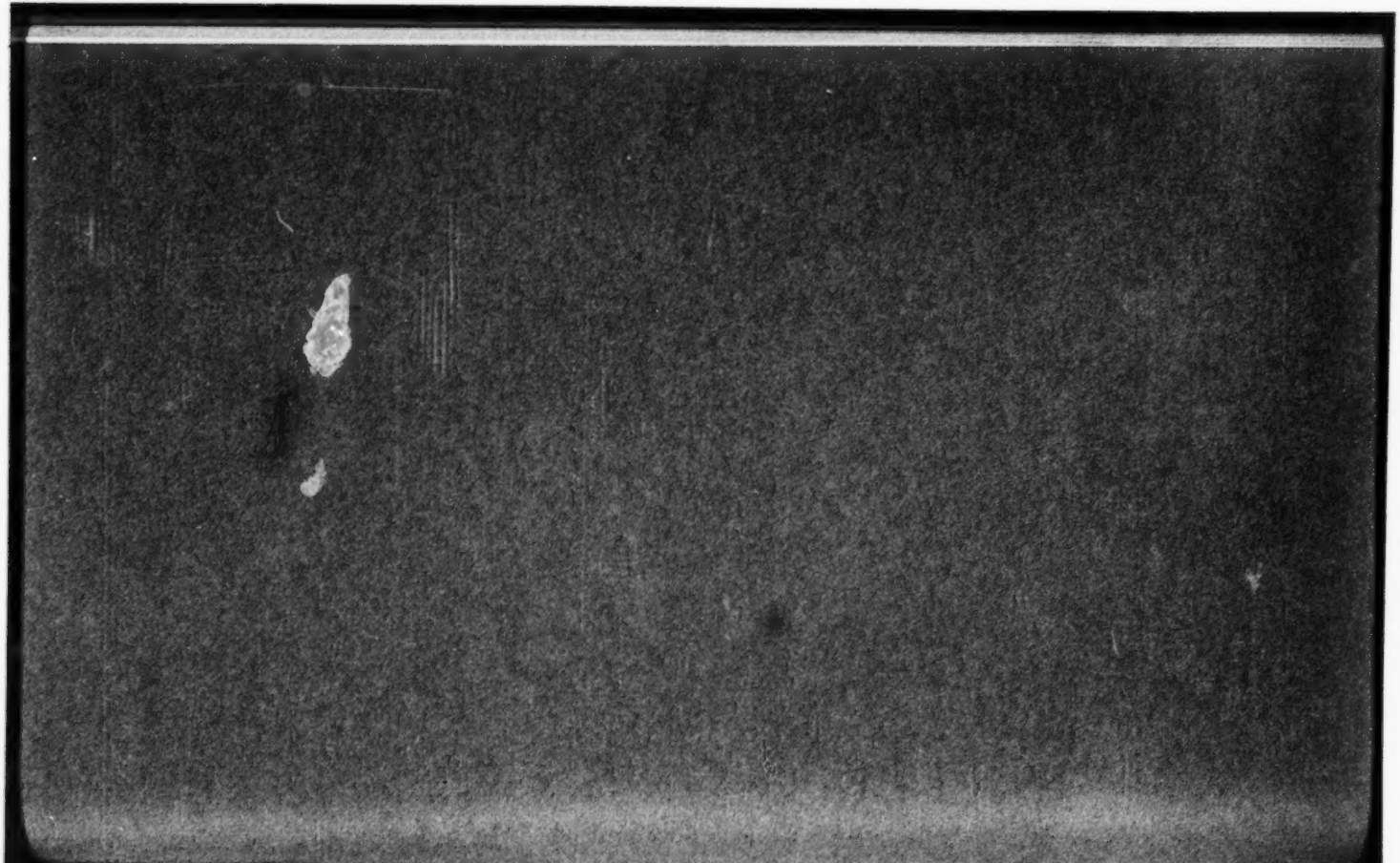
We hereby acknowledge service of the above præcipe this 8 day of December, 1922. Edw. H. Chandler, Summers Hardy, Attorneys for Defendant in Error.

355 **CERTIFICATE OF CLERK.**

I, William M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 354 pages, numbered from 1 to 354 both inclusive, are a full, true and complete transcript of the record and all proceedings in the Supreme Court of the State of Oklahoma requested by precipe for record filed herein, in cause No. 11,209, entitled Tidal Oil Company, a corporation, and Eleanor Arnold, Plaintiffs in error, versus J. P. Flanagan, Defendant in error, as the same remain of record and on file in my office.

In witness whereof, I hereto set my hand and affix the seal of said Supreme Court, at Oklahoma City, Oklahoma, this 19″ day of December, 1922. William M. Franklin, Clerk Supreme Court, by Jessie Pardoe, Deputy. [Seal Supreme Court, State of Oklahoma.]

Endorsed on cover: File No. 29,314. Oklahoma Supreme Court. Term No. 764. Tidal Oil Company and Eleanor Arnold, plaintiffs in error, vs. J. P. Flanagan. Filed December 27th, 1922. File No. 29,314.



INDEX.

Authorities Cited.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 179.

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Plaintiffs in Error.

vs.

J. P. FLANAGAN, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

MOTION TO DISMISS OR TO AFFIRM.

Now comes the above named defendant in error, and moves the court to dismiss the writ of error herein for want of jurisdiction, for the following reasons:

I.

That in the final judgment of the Supreme Court of Oklahoma there was not drawn in question the validity of any treaty or statute of, or an authority exercised under, the United States, nor was the de-

cision against their validity; and there was not drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, nor was the decision in favor of their validity.

II.

This court, by order entered March 12, 1923, denied the motion and petition of the plaintiffs in error for writ of *certiorari* in this cause.

III.

That no contention involving constitutional rights, the denial of which would give this court jurisdiction upon writ of error, was presented to said State Supreme Court prior to the entry of final judgment of affirmance in said court, the contention that the alleged "change in the rule of law or construction of statutes" by said court would constitute impairment of the obligation of the contract of Tidal Oil Company, one of the plaintiffs in error, being first raised in the petition of Tidal Oil Company for rehearing, filed May 16, 1922, which application was denied by said court on October 17, 1922, without reasons given.

And said defendant in error, in the alternative, moves the court to affirm the judgment of the Supreme Court of Oklahoma in this cause, because, although the record may show that this court has ju-

risdiction, yet it is manifest the writ of error was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.

EDWARD H. CHANDLER,
SUMMERS HARDY,
Attorneys for Defendant in Error.

WILLIAM O. BEALL,
THOMAS J. HANLON,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 179.

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Plaintiffs in Error.

vs.

J. P. FLANAGAN, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

BRIEF OR ARGUMENT OF DEFENDANT IN ERROR IN SUPPORT OF MOTION TO DISMISS OR TO AFFIRM.

This cause is pending in this court on writ of error to the Supreme Court of Oklahoma, to review a judgment of that court modifying, and as so modified, affirming, a judgment of the District Court of Creek County in said state, in favor of the above named defendant in error, and for accounting. The judgment of said Supreme Court was entered and the opinion of the court filed therein on the 28th day

of March, 1922 (Tr., pp. 139 to 149, inclusive), and thereafter, by orders of said court, the time for filing a petition for rehearing was extended, and the first petition of plaintiff in error, Tidal Oil Company, was filed May 16, 1922 (Tr., p. 149), and the separate petition of the plaintiff in error, Eleanor Arnold, was also filed on said date (Tr., p. 154); and thereafter and on October 17, 1922, said court entered an order denying the petitions for rehearing, without opinion or giving reasons therefor (Tr., p. 156); and thereafter and on November 10, 1922, said plaintiff in error, Tidal Oil Company, filed its second petition for rehearing (Tr., p. 156), and by order of said court, entered on the same date, said second petition for rehearing was denied, without opinion and without reasons given by said court (Tr., p. 160), and thereafter and on November 22nd, 1922, writ of error from this court was duly allowed by the Acting Chief Justice of the Supreme Court of Oklahoma (Tr., p. 163).

First Ground of Motion to Dismiss.

An examination of the original petition filed in the trial court (Tr., p. 4), and the separate answer thereto of plaintiff in error, Tidal Oil Company (Tr., p. 11), and the separate answer of the plaintiff in error, Eleanor Arnold (Tr., p. 23), and reply of defendant in error thereto (Tr., p. 30), being the issues upon which the case was tried by the trial court and passed upon by the Supreme Court of Oklahoma,

will clearly disclose that neither in the issues made by said pleadings, nor in the final judgment and opinion of the Supreme Court of Oklahoma (Tr., p. 139), was there drawn in question the validity of any treaty or statute of or authority exercised under the United States, nor the validity of any statute of or authority exercised under any state, within the principles settled by prior decisions of this court.

—*Telluride Power Co.* v. *Rio Grande R. Co.*, 179 U. S. 639, 44 L. ed. 305;

Philadelphia & R. Coal Co. v. *Gilbert*, 245 U. S. 162, 62 L. ed. 221;

Yazoo Valley R. R. Co. v. *Clarksdale*, 257 U. S. 16, 66 L. ed. 46;

Schaff v. *Famechon Co.*, 258 U. S. 76, 66 L. ed. 472.

It has been repeatedly held by this court that where no question is raised as to the validity of a statute of the United States, but merely as to the application of the statute to the case, or its construction, no federal question arises, and that such validity must have been drawn in question directly and not incidentally.

—*United States* v. *Lynch*, 137 U. S. 280, 34 L. ed. 700;

Ferry v. *King County*, 141 U. S. 668, 35 L. ed. 895;

Cameron v. *United States*, 146 U. S. 533, 36 L. ed. 1077;

South Carolina v. *Seymour*, 153 U. S. 353, 38 L. ed. 742;

United States v. *Ware*, 189 U. S. 508, 47 L. ed. 922;

Jett v. *Carrolton*, 252 U. S. 1, 64 L. ed. 421.

Second Ground.

This court having denied the petition for *certiorari* herein, we deem it unnecessary to discuss at this point the proposition that, with the exception of the possible application of the February 17, 1922, amendment to section 237, of the Judicial Code, all federal questions, with the exception of the validity of the statutes or authorities mentioned in the foregoing ground, have been disposed of by such ruling.

—*Dana* v. *Dana*, 250 U. S. 220, 63 L. ed. 947;

Citizens' Nat. Bank v. *Durr*, 257 U. S. 99, 66 L. ed. 149;

Ireland v. *Woods*, 246 U. S. 233, 62 L. ed. 745.

Third Ground.

The only assignment of error filed in the Supreme Court of Oklahoma alleging any federal question by the plaintiffs in error was assignment number VI (Tr., p. 3), which reads:

> "The judgment and decree of the court, by divesting Tidal Oil Company of its rights and title acquired under the judgment of the District Court of Creek County, and the judgment and order of the County Court of Creek County, each having jurisdiction of the premises, amount to, and the enforcement thereof constitutes, a

taking of property without due process of law, and in violation of the Constitution of the United States and of the State of Oklahoma."

That said assignment of error involves a question which can only be reviewed by this court on *certiorari* and not writ of error, since the amendment of September 6, 1916, to section 237, of the Judicial Code, has been decided by this court in the following cases:

"*3.* (Syl.) A writ of error from the Federal Supreme Court to a state court to review a judgment which became final after the effective date of the Act of September 6, 1916 (39 Stat. L. 726, Chap. 448, Comp. Stat. 1916, Sec. 1207), must be dismissed where an examination of the record shows that there was not really drawn in question in the courts below the validity of a treaty or statute of, or an authority exercised under, the United States, or the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the Federal Constitution, treaties or laws."

—*Citizens' Bank* v. *Opperman*, 249 U. S. 448, 63 L. ed. 701.

"*1.* (Syl.) *Certiorari*, not writ of error, is the only mode of reviewing in the Federal Supreme Court the judgment of a state court granting a writ of prohibition over the objection that said prohibition would take property without due process of law, contrary to the fourteenth assignment to the Federal Constitution."

—*Bullock* v. *Florida, ex rel. Railroad Commission*, 254 U. S. 513, 65 L. ed. 381;

Dana v. *Dana*, 250 U. S. 220, 63 L. ed. 947;

New York Central v. *York*, 256 U. S. 406, 65 L. ed. 1017;

Yazoo Valley R. R. Co. v. *Clarksdale*, 257 U. S. 16, 66 L. ed. 46;

Jett v. *Carrolton*, 252 U. S. 1, 64 L. ed. 421.

"The bill contains, also, averments, to the effect that, in administering the ordinance, the officials have discriminated against plaintiff in such a way as to deny to her the equal protection of the laws. These averments do present a substantial constitutional question. *Neal* v. *Delaware*, 103 U. S. 370, 26 L. ed. 567. But the question is not of that character which entitles a litigant to a review by this court on writ of error. The question does not go to the validity of the ordinance; nor does it go to the validity of the authority of the officials. * * * This charge is of an unconstitutional exercise of authority under an ordinance which is valid. Compare *Stadelman* v. *Miner*, 246 U. S. 544, 62 L. ed. 875, 38 Sup. Ct. Rep. 359. Unless a case is otherwise properly heard on writ of error, questions of that character can be reviewed by this court only on petition for a writ of *certiorari*.

"Writ of error dismissed."

—*Zucht* v. *King*, (Nov. 13, 1922) 260 U. S. 174, 67 L. ed. ...., 43 Sup. Ct. Rep. 24.

We, therefore, contend that such an allegation of federal right denied by the State Supreme Court would not give jurisdiction to this court upon writ of error.

As we read the record, the first assignment of error presented to the state court, claiming that the alleged "change of construction" and "change in the rule of law or construction of statutes" was first raised by plaintiff in error, Tidal Oil Company, in its petition for rehearing which was filed May 16, 1922 (Tr., p. 149), which petition for rehearing was overruled on October 17, 1922, and denied without any opinion by said court or reasons given therefor (Tr., p. 156); even though the amendment of February 17, 1922, amending section 237, of the Judicial Code, became effective prior to the rendering of the judgment of the Supreme Court of Oklahoma herein, which was rendered March 28, 1922 (Tr., p. 139), nevertheless said amendment requires that the claim that there is a change in the rule of law or construction of statutes which is repugnant to the Constitution of the United States, must be "made in said court * * * before said final judgment is entered," and further requires that the decision of the court be against the claim so made, the full amendment reading as follows:

> "In any suit involving the validity of a contract wherein it is claimed that a change in the rule of law or construction of statutes by the highest court of a state applicable to such contract would be repugnant to the Constitution of the United States, the Supreme Court shall, upon writ of error, re-examine, reverse or affirm the final judgment of the highest court of a state in which a decision in the suit could be had,

if said claim is made in said court at any time before said final judgment is entered and if the decision is against the claim so made" (Act of Feb. 17, 1922, Ch. 54, 42 Stat. L. 366).

It is the settled doctrine of this court that under these circumstances no foundation is made for writ of error from this court, some of the many decisions being as follows:

"*2.* (Syl.) The overruling by the highest court of a state, without opinion, of a petition for rehearing, cannot be made the basis of a writ of error from the Federal Supreme Court."

And in the opinion the court said:

"In the present case, no such claim of the invalidity of a state statute or authority was raised in a manner requiring the court below to pass upon the question in disposing of the rights asserted. As we have said, whatever the effect of a petition for rehearing, it came too late to make the overruling of it, in the absence of an opinion, the basis of review by writ of error. It follows that the allowance of the writ of error in the present case did not rest upon a decision in which was drawn in question the validity of a statute of the state or any authority exercised under it, because of repugnancy to the Federal Constitution, and the writ of error must be dismissed, and it is so ordered."

—*Jett* v. *Carrolton*, 252 U. S. 1, 64 L. ed. 421.

"*1.* (Syl.) The federal question first raised in an application to the highest court of a state for rehearing comes too late to serve as the basis

of a writ of error from the Federal Supreme Court, where the state court denied the application without reasons given."

—*Citizens' Nat. Bank* v. *Durr*, 257 U. S. 99, 66 L. ed. 149.

"Of course, in determining whether that question was raised and decided, we must be guided by the record. *Butler* v. *Gage*, 138 U. S. 52, 56; *Zadig* v. *Baldwin*, 166 U. S. 485, 488. It has been examined and we find it does not show that the question was raised in any way prior to the judgment of affirmance in the Supreme Court. In their assignments of error on appeal to that court, the plaintiffs said nothing about the statute or its validity; nor was there any reference to either in the court's opinion. All that appears is that after the judgment of affirmance, the plaintiffs sought to raise the question by a petition for rehearing, which was denied without opinion. But that effort came too late."

—*Rooker* v. *Fidelity Trust Co.*, (Feb. 19, 1923), ... U. S. ...., 67 L. ed. ...., 43 Sup. Ct. Rep. 288.

It is apparent from the statement of facts herein set forth that the final judgment was made and entered by the Supreme Court of Oklahoma, affirming the decision of the trial court, with modifications, on March 28, 1922, being the same date upon which the opinion of the court was also filed (Tr., pp. 139 to 149, inclusive), and that said final judgment and opinion upon which it was based must be examined to determine whether or not the contention with ref-

erence to the alleged change in the rule of law and construction of statute had been made prior to that time in that court in such a manner that the attention of the state court was drawn to it as being a claim that such alleged change was repugnant to some definite and stated limitation of the Constitution of the United States; such examination will disclose that the only federal question, either in the assignments of error above noted or passed upon in the opinion, was such an alleged change in construction and setting aside of an alleged "rule of property" as would deprive the plaintiffs in error of their property without due process of law "in violation of the Constitution of the United States." We have shown by the decisions hereinbefore cited that such a federal question so presented is not reviewable in this court by writ of error.

Such examination will further disclose that the first allegation that such alleged change would impair the obligation of the contract of said plaintiff in error, Tidal Oil Company, appears in the petition for rehearing filed on May 16, 1922, and that by virtue of the orders thereafter made by the state court denying, without opinion or reasons given but merely by orders made, said respective petitions for rehearing, that such question was in fact not passed upon by the state court "before said final judgment was entered;" in other words, that mere orders made after the final judgment of affirmance had been made and entered were not "final judgments" of said court

within the language of section 237, of the Judicial Code and amendments thereto.

> "It is settled law, that where the record discloses that the judgment of the state court was based, not alone upon a ground involving a federal question, but also upon another and independent ground broad enough to maintain the judgment, this court will not take jurisdiction to review such judgment, and will dismiss a writ of error brought for that purpose."
>
> —*New York, ex rel. Doyle,* v. *Atwell* (No. 306, decided Apr. 9, 1923), ... U. S. ...., 67 L. ed. .....

Alternative Motion to Affirm.

Our contention with reference to this part of our motion is based upon section 5, of Rule 6, to the effect that the federal questions presented, if the court should find that it has jurisdiction by virtue of the writ of error granted herein, have already been determined by prior decisions of this court and need no further argument herein.

> "Having disposed thus of the grounds presented for dismissing the writ of error, we come to the alternative prayer for affirmance under section 5, of Rule 6 of this court, when the questions presented on such a motion are found by the court, in view of our previous decisions, to be so wanting in substance as not to need further argument, we dispose of the case."
>
> —*Boston* v. *Jackson,* (Dec. 4, 1922) .... U. S. ..., 67 L. ed. ..., 43 Sup. Ct. Rep. 129.

"The ground of the alternative motion to affirm the judgment of the Supreme Court is that the writ was taken for delay only, and presents no substantial question for review. It should be granted if the questions on which the decisions depend are so wanting in substance as not to need further argument."

—*Hodges* v. *Snyder*, (Apr. 9, 1923) .... U. S. ..., 67 L. ed. ..., 43 Sup. Ct. Rep. 435;

Milheim v. *Moffitt Tunnel Improvement District*, (June 11, 1923) .... U. S. ...., 67 L. ed. ...., 43 Sup. Ct. Rep. 694.

We think that giving the respective assignments of error upon which this proceeding in this court is based (Tr., pp. 164 to 168, inclusive) the broadest possible construction will show that, with reference to any alleged repugnancy to the provisions of the United States Constitution, they may be embraced within two propositions, although stated in several different ways, and those are:

(A)

That the final judgment and opinion of the State Supreme Court in this cause, by holding that the District Court of Creek County, Oklahoma, and the County Court of Creek County, Oklahoma, had no jurisdiction, power or authority to render the judgment, decrees and orders rendered by them described in said judgment and opinion and by announcing the rule of law set forth in said final judgment and opinion, deprived the plaintiff in error of

its vested rights and property without due process of law, because:

> **(1)** ***It failed to uphold a prior judgment rendered by a court of that state; and,***
>
> **(2)** ***Changed a rule of law and of property so that the rule announced in said opinion was different from the rule prevailing at the time plaintiff in error acquired its rights upon the land involved.***

(B)

That such alleged change in a rule of law and of property "impaired the obligation of its contract entered into under a different construction of the statutes and prior to the change in such construction by its later decisions."

The first subdivision of proposition "(A)," to-wit—that Tidal Oil Company, plaintiff in error, has been deprived of its property without due process of law because the state court failed to uphold a prior judgment rendered by a court of that state—we think has been definitely passed upon and such contention denied by this court in the case of *Bonner* v. *Gorman*, 213 U. S. 86, 53 L. ed. 709, wherein the contention was made that the state court deprived the plaintiff in error of his property without due process of law by upholding a prior judgment between the parties, and that by so upholding and enforcing said prior judgment, which the plaintiff in error contended was a void and illegal judgment, the state court thus deprived the plaintiff in error of his prop-

erty, the court stating the federal question to be as follows:

> "A writ of error from this court was allowed May 9, 1907, the petition for the writ containing an assignment of errors, of which one was that the judgment of the probate court was null and void, and all other judgments based upon it were void also, so that the Bonners, appellants, by their enforcement, were deprived of their property without due process of law, in violation of the fourteenth amendment. The record was filed here June 3, 1907, and the case submitted February 23, 1909 (page 91).
>
> "* * * It is firmly established that, when parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the state court does not deprive the unsuccessful party of his property without due process of law, within the fourteenth amendment of the Constitution of the United States (page 92)."

And the court dismissed the writ of error for want of jurisdiction in this court.

As we view it, the only difference between that case and the one at bar is that it was there contended that for the state court to uphold a prior judgment which the plaintiff in error alleged to be void was depriving him of his property without due process of law, whereas in this case plaintiff in error contends that because the State Supreme Court failed and refused to uphold the prior judgment of a court of that state that it had been deprived of

its property without due process of law, but we see no difference in the principle involved.

The second subdivision of proposition "(A)"—that there was such a change in the rule of law or rule of property, in that the rule announced by the court in this case was different from the rule prevailing at the time plaintiff in error acquired its rights and interests in and upon the land herein involved—has, we think, been decided by this court in the case of *Central Land Co.* v. *Laidley*, 159 U. S. 103, 40 L. ed. 91, in which case the assignment of error was as follows:

> "*Third.* Because there appears on the record of said cause a federal question in this: That the courts of West Virginia, in construing the said statute relating to deeds and acknowledgments thereof, so as to invalidate the said deed to C. P. Huntington, under which your petitioner claims, changed, without legislative action, the settled and established construction which existed at the time of the execution and delivery of said deed, which is contrary to the Constitution of the United States; and that there is a federal question raised by said record in this: That the said decision of the Circuit Court of Cable County, which undertakes to deprive your petitioner of his property, is without due process of law, retroactive, and unconstitutional (page 107)."

The court in its opinion states the question involved to be:

> "The question upon the merits of this case, discussed at length by counsel, were whether

the Supreme Court of Appeals of West Virginia rightly construed the provisions of the code of that state of 1868, which was, and was admitted to be, in all material respects, a re-enactment of the corresponding provision of the Code of Virginia of 1860, prescribing the form of acknowledgment by a married woman of a deed of real estate; and where the court below gave a construction of that provision less favorable to the validity of such deed than had been given to it by its own earlier decisions, and by the highest court of Virginia before the creation of the State of West Virginia. Those questions are not free from difficulties; and this court, before undertaking to pass upon them, must be satisfied that it has jurisdiction to do so.

"The grounds relied on for invoking the appellate jurisdiction of this court are, in substance, that, by the decision of the Supreme Court of Appeals of West Virginia, without any legislative action, the obligation of the contract contained in the deed from Mr. and Mrs. Pennybacker to Huntington, the grantor of the plaintiff in error, has been impaired, and the plaintiff in error has been deprived of its property without due process of law.

"Assuming, without deciding, that these grounds were sufficiently and seasonably taken in the courts of West Virginia, we are of opinion that they present no federal question. * * * (page 109).

"If this court were to assume jurisdiction of this case, the question submitted for its decision would be not whether the statute was repugnant to the Constitution of the United States, but whether the highest court of the state had

erred in its construction of the statute. * * * (page 110).

"When the parties have been fully heard, in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law, within the fourteenth amendment of the constitution of the United States (citing cases). * * *

"This court, therefore, has no authority to decide the main questions argued at the bar, whether the decision of the Supreme Court of Appeals of West Virginia, in effect, and erroneously, overruled the prior decisions of that court, and of the Supreme Court of Appeals of Virginia before West Virginia became a separate state; and the writ of error must be dismissed for want of jurisdiction."

In the case of *Loeb* v. *Trustees of Columbia Township*, 179 U. S. 472, 45 L. ed. 281, the court discusses the difference in the jurisdiction of this court on appeal from a United States Court of Appeals, and from that on proceedings in error to the highest court of a state, explaining the difference between the jurisdiction of this court in this proceeding from which it would have if this were an appeal from or writ of error to a United States Court of Appeals.

There is not and cannot be any contention that the plaintiffs in error were not "fully heard in the regular course of judicial proceedings" in the State Supreme Court, because they were permitted to not

only file a first petition for rehearing, but were even permitted to file a second petition for rehearing in said court.

We therefore submit that this contention should be "found to be so wanting in substance as not to need further argument."

(B)

With reference to this contention—that the alleged change in construction or rule of property impaired the obligation of the contracts theretofore entered into by plaintiff in error, Tidal Oil Company—this court has heretofore decided:

> "*1.* (Syl.) In order to come within the provisions of the Constitution of the United States, which declares that no state shall pass any law impairing the obligation of contracts, not only must the obligation of a contract have been impaired, but it must have been impaired by some act of the legislative power of the state, and not by a decision of its judicial department only."
>
> —*Central Land Co.* v. *Laidley*, 159 U. S. 103, 40 L. ed. 91.

> "*4.* (Syl.) A change by a state court of its construction of a state statute, even if its former construction had become a rule of property, cannot constitute a federal question as to the impairment of the obligation of a contract, for which a writ of error will lie from the Supreme Court of the United States to a state court.
>
> "*5.* The proper judgment on a decision that no federal question exists on writ of error from

the Supreme Court of the United States to a state court is one of dismissal."

And in the opinion the court said:

"The construction of the general law which had been thus given by the courts upon the question of what was a sufficient survey, it is claimed had become a rule of property which parties were entitled to rely upon, and which no court could overturn, and if it did so, a contract was impaired, and the judgment was reviewable by this court. The proposition cannot be maintained as a basis for giving this court jurisdiction upon writ of error to the state court. It ignores the limits to our jurisdiction in this regard, which as has been seen, is confined to legislation which impairs the obligation of a contract * * * The argument involves the claim that jurisdiction exists in this court to review a judgment of a state court on writ of error when such jurisdiction is based upon an alleged impairment of a contract by reason of the alteration by a state court of a construction theretofore given by it to such contract or to a particular statute or series of statutes in existence when the contract was entered into. Such a foundation for our jurisdiction does not exist. * * * In cases of that nature there is room for the principle laid down that the construction of a statute and admission as to its validity made by the highest court of a state prior to the issuing of any obligations based upon the statute, enters into and forms a part of the contract and will be given effect to by this court as against a subsequent changing of a decision by the state court by which such legislation might be held to be invalid. But effect is given to it by this court only on appeal from a

judgment of a United States court and not from that of a state court. This court has no jurisdiction to review a judgment of a state court made under precisely the same circumstances, although such state court thereby decided that the state legislation was void which it had prior thereto held to be valid. It has no such jurisdiction, because of the absence of any legislation subsequent to the issuing of the bonds which had been given effect to by the state court. In other words, we have no jurisdiction, because a state court changes its views in regard to the proper construction of its state statute, although the effect of such judgment may be to impair the value of what the state court had before that held to be a valid contract."

—*Bacon* v. *Texas*, 163 U. S. 207, 41 L. ed. 132.

"It has been many times decided that a writ of error will not lie from this court to a state court under section 709, Revised Statutes (U. S. Comp. Stats. 1901, p. 575), on the ground that the obligation of a contract has been impaired by a change in the decision of the court in respect of the meaning and scope of a state statute, the validity of which has not been denied. * * * If, therefore, a mere change of decision by a state court in respect of the meaning and scope of a state statute, not claimed to be invalid or repugnant to the Constitution of the United States, does not constitute an impairment of a contract within the meaning of the contract clause of the constitution, it must follow that a case otherwise within the jurisdiction of a District Court of the United States, and reviewable in the Circuit Court of Appeals, is not a case

which may come direct to this court merely because, in the course of the case, a question arises touching the effect of such a change of decision upon the rights of the parties. * * *

"The change of decision in respect of the scope of the Indiana Statutes was not a law of the state impairing the obligation of the contract, which is the only basis for the claim that the case is one which involved the construction or application of the Constitution of the United States.

—*Moore-Manafield Constr. Co.* v. *Electrical Co.*, 234 U. S. 619, 58 L. ed. 1503.

It should be borne in mind that there was no contention made in either of the courts below that any statute was passed by the State of Oklahoma or Congress of the United States, which was claimed to have affected in any way the rights of plaintiffs in error herein, after they acquired their alleged interests in the allotment of said Indian citizen, but that the real contention is that there has been merely a change in construction of an Act of Congress passed prior thereto and of the jurisdiction of a court of a state exercising probate jurisdiction to approve a compromise settlement made by a guardian, under and by virtue of the laws and practice of the State of Oklahoma, so that the point involved is practically the same as that passed upon by this court in the case of *Ross* v. *Oregon*, 227 U. S. 150, 57 L. ed. 458, wherein Mr. Justice VAN DEVANTER, speaking for the court, said:

"Bearing in mind what has been said, and especially that the depository act and Sec. 1807, were both in force at the time of the alleged offense, it will be perceived that the real complaint which we are asked to consider is not that the Supreme Court of the state in any wise rested its judgment upon a statute passed after the time of the alleged offense, but only that it misconstrued a pre-existing statute to the disadvantage of the plaintiff in error, and that such a decision is an *ex post facto* law within the meaning of Article I, Sec. 10, of the Constitution, which declares: 'No state * * * shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts' (page 161).

"But that provision of the constitution, according to the natural import of its terms, is a restraint upon legislative power, and concerns the making of laws, not their construction by the courts. It has been so regarded from the beginning" (page 161). * * *

"The plaintiff in error cites the cases of *Kring* v. *Missouri*, 107 U. S. 221, 27 L. ed. 506, 2 Sup. Ct. Rep. 443; *Muhlker* v. *New York & H. R. Co.*, 197 U. S. 544, 49 L. ed. 872, 25 Sup. Ct. Rep. 522; *Louisiana* v. *Pilsbury*, 105 U. S. 278, 26 L. ed. 1090; *Gelpoke* v. *Dubuque*, 1 Wall. 175, 17 L. ed. 520, and *Butz* v. *Muscatine*, 8 Wall. 575, 19 L. ed. 490, as holding that a judicial decision may be a law in the sense of the constitutional provision which he invokes. But none of those cases, when rightly considered, s u s t a i n s that position. The first was a criminal case in which a provision in a new constitution was held to be an *ex post facto* law as to an offense theretofore committed; the second presented the question

whether a state Statute of 1892, impaired contractual obligations created by deeds of much earlier date; the third and fourth were explained in *Central Land Co.* v. *Laidley*, 159 U. S. 103, 111, 112, 40 L. ed. 91, 94, 95, 16 Sup. Ct. Rep. 80; *Bacon* v. *Texas*, 163 U. S. 207, 221-223, 41 L. ed. 132, 137, 138, 16 Sup. Ct. Rep. 1023, and *Turner* v. *Wilkes County*, 173 U. S. 461, 43 L. ed. 768, 19 Sup. Ct. Rep. 464, and were there shown not to be in conflict with other cases on the subject, and the fifth is in no wise distinguishable from the fourth" (page 164). * * *

"As the record presents no federal question, we are without jurisdiction to review the judgment, and therefore cannot enter into the merits of the questions that were presented and determined in the state court.

"Writ of error dismissed" (page 164).

"The contract clause of the constitution, as its words show, is directed against impairment by legislative action, not against a change in judicial decision. It has no bearing on the authority of an appellate court, when a case is brought before it a second time, to determine the effect to be given to the decision made when the case was first there. *Cross Lake Club* v. *Louisiana*, 224 U. S. 632, 638; *Ross* v. *Oregon*, 227 U. S. 150, 161; *Seattle, Renton & Southern Ry. Co.* v. *Linhoff*, 231 U. S. 568; *Kryger* v. *Wilson*, 242 U. S. 171, 177; *Columbia Railway, Gas & Electric Co.* v. *South Carolina* (decided today). And see *King* v. *West Virginia*, 216 U. S. 92, 100; *Messenger* v. *Anderson*, 225 U. S. 436, 444. Assuming that the objection to a change in decision was seasonably presented, it amounted to nothing more than saying that in

> the plaintiffs' opinion the court should follow the first decision. It did not draw in question the validity of an authority exercised under a state in the sense of the writ of error provision. *Philadelphia & Reading Coal & Iron Co.* v. *Gilbert*, 245 U. S. 162, 166; *Stadelman* v. *Miner*, 246 U. S. 544, 546; *Moss* v. *Ramey*, 239 U. S. 538, 546; *Gasquet* v. *Lapeyre*, 242 U. S. 367, 369. Whether there was any substantial change in decision we need not inquire."
>
> —*Rooker* v. *Fidelity Trust Co.*, (Feb. 19, 1923) .... U. S. ...., 67 L. ed. ...., 43 Sup. Ct. Rep. 288.

We therefore respectfully contend that this question is also "so wanting in substance as not to need further argument."

In conclusion, we think that, as set forth in our brief in opposition to the motion and petition for *certiorari* heretofore filed in this court by the plaintiffs in error, there has been no change of decision with reference to any rule of property concerning the allotment of restricted Indians, in the opinion of the Supreme Court of Oklahoma in this cause; but even if there had been, we do not think that the highest state court is the final authority with reference to the construction of an Act of Congress or a clause or limitation of the Federal Constitution, because if it were and the contention of the plaintiffs in error should prevail, we would have an anomalous situation; assume for the purpose of argument that prior to the time Tidal Oil Company acquired its

interest in this Indian allotment, it relied upon decisions of the Supreme Court of Oklahoma construing the Act of Congress, holding that an Indian could convey his interest in said land in a way which would be in effect in violation of the provisions of said Act, and that this court would now hold, if the question were presented to it, that those decisions did not properly construe the Act of Congress; then if the plaintiff in error could successfully contend that even though it acquired its rights in violation of the express provisions of the Act of Congress (as now construed by the Supreme Court of the United States), but which rights were based upon a different construction then made of said Act by the Supreme Court of Oklahoma, and that, by such purchase, in reliance upon the construction of the state court, it acquired a vested interest by virtue of a rule of property such that a later decision holding that such right was in fact in violation of the Act of Congress, even though such decision might be made by virtue of a subsequent decision of this court, then this court would be in the position, as contended by plaintiff in error herein, that even though it acquired its rights in violation of the Act of Congress as construed by the state court, nevertheless the Constitution of the United States protects it in its property and by virtue thereof it is entitled to hold such interest, even though it acquired it in violation of the terms of an Act of Congress as finally construed by the Supreme Court of the United States.

Such a result does not appeal to us, and we cannot believe it will appeal to this court, and therefore we think the true rule is that with reference to any rule of property for acquiring vested rights with reference to the restricted lands of Indian allottees, the only rule of property construing said acts upon which a party can claim a constitutional and vested interest is the construction given the Act of Congress by this court and not by that of the highest court of any respective state.

Such a contention was expressly denied by the Supreme Court of Oklahoma in its opinion filed in this cause, wherein it said (Tr., p. 147):

> "This court is committed to the rule that no rule of property may exist to render valid conveyances made in violation of a statute or of a governmental policy."
>
> —*Gannon* v. *Johnson*, 40 Okl. 694, 243 U. S. 108, 61 L. ed. 625.

The defendant in error, therefore, respectfully submits that its motion should be sustained and the writ of error dismissed, or that the judgment of the Supreme Court of Oklahoma should be affirmed by this court.

Respectfully submitted,

EDWARD H. CHANDLER,
SUMMERS HARDY,
Attorneys for Defendant in Error.

WILLIAM O. BEALL,
THOMAS J. HANLON,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 179.

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Plaintiffs in Error.

vs.

J. P. FLANAGAN, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

NOTICE OF SUBMISSION OF MOTION.

To Messrs. Preston C. West, Alexander A. Davidson, Wallace C. Franklin and Arthur J. Biddison, Attorneys for Plaintiffs in Error:

Please take notice that on Monday, the 19th day of November, 1923, at the opening of court on that day, or as soon thereafter as counsel can be heard, a motion to dismiss or to affirm, of which a copy is annexed hereto, will be submitted to the Supreme Court of the United States, at the City of Washing-

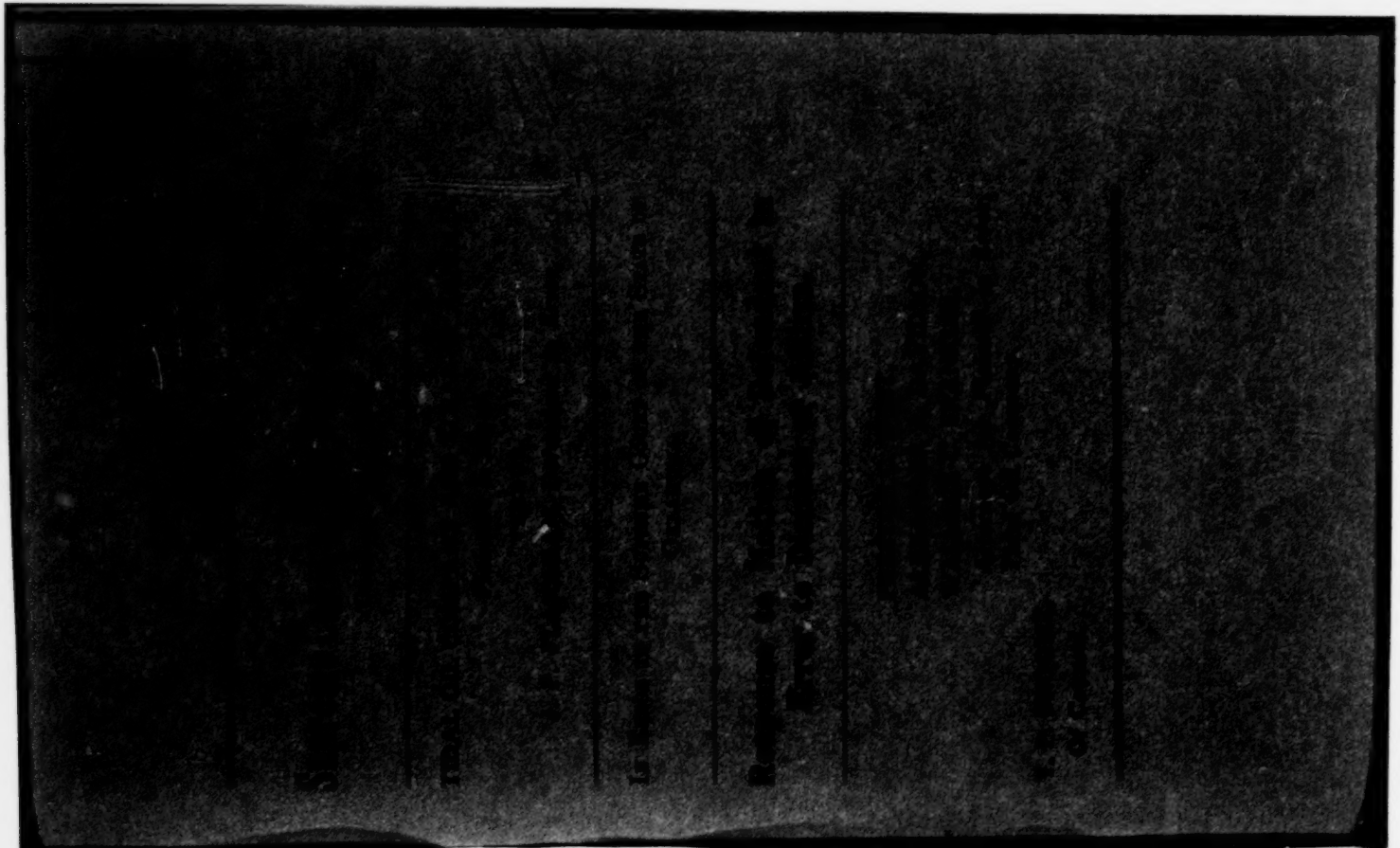
tion, District of Columbia, for the decision of said court thereon; and that at the same time, a brief or argument in support thereof, copies of which are hereto attached, will also be submitted to said court.

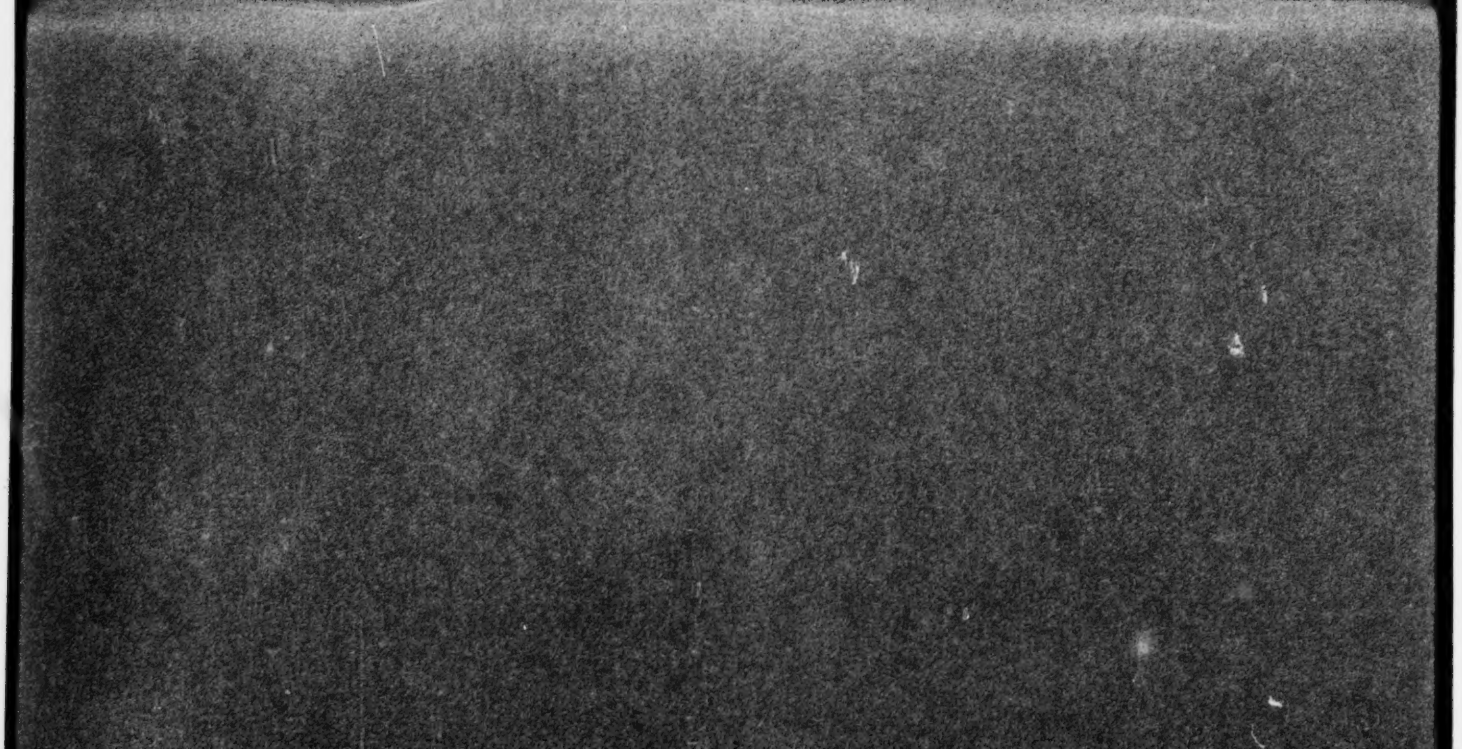
EDWARD H. CHANDLER,
SUMMERS HARDY,
Attorneys for Defendant in Error.

WILLIAM O. BEALL,
THOMAS J. HANLON,
Of Counsel.

We hereby acknowledge service of the foregoing notice, together with copies of the motion and brief or argument referred to in said notice, this 26th day of October, 1923.

PRESTON C. WEST,
ALEXANDER A. DAVIDSON,
WALLACE C. FRANKLIN,
ARTHUR J. BIDDISON,
Attorneys for Plaintiff in Error.





INDEX.

PAGE

AUTHORITIES CITED.

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OCTOBER TERM, 1923.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

RESPONSE TO MOTION OF DEFENDANT IN ERROR TO DISMISS OR AFFIRM.

Insofar as plaintiff in error, Tidal Oil Company, is concerned, it is conceded that the writ of error may only be sustained under the provisions of the Act of Congress of February 17, 1922 (42 Stat. L. 366), amending section 237, Judicial Code.

The record presents this situation:

The parties on both sides of the controversy make their respective claims to the property in-

volved through Robert Marshall, the minor Creek freedman citizen to whom the land was allotted.

On June 30, 1913, the allottee, represented by his duly authorized guardian, entered into an agreement with one, Arnold, in settlement and compromise of certain controversies existing between them relative to the ownership of said allotment. This compromise provided, among other things, in substance, that the oil and gas lease theretofore made on said land and under which lease the land was being operated for oil and gas should be recognized as a valid and binding lease, and that the lessees or their assigns should continue to operate for oil and gas on said premises, under the terms of said oil and gas lease (Tr., p. 20).

On petition filed by said guardian in the probate court of his appointment (Tr., p. 80) that court approved and confirmed the agreement (Tr., p. 81).

This plaintiff in error claims its interest in the property as assignee of the lease recognized and adopted by the guardian on behalf of the allottee with the approval of the proper probate court, the assignments to the Tidal Oil Company having been made on July 12 and August 1, 1915 (Tr., pp. 76-78); Okla Oil Company and Tidal Oil Company being the same corporation, under an amendment of its articles changing its name.

Under the statutes of Oklahoma, as construed by its highest court at the time the lease was adopted

by the guardan, with approval of the probate court, it was the law of the state that the only requisite to the validity of an oil and gas mining lease made by a guardian on the land of his ward was that the lease agreement must be sanctioned or approved by the probate court having jurisdiction of the guardianship.

—*Duff* v. *Keaton*, 124 Pac. 291 (opinion in 1912);

Allen v. *Midway O. & G. Co.*, 124 Pac. 296 (opinion in 1912);

Cowles v. *Lee*, 128 Pac. 688.

As a matter of interest only, attention of this court is called to the fact that the Supreme Court of Oklahoma, in a very recent decision rendered on March 27, 1923, in a case entitled *Papoose Oil Company* v. *Swindler*, which has not as yet been reported, expressly referred to the case of *Duff* v. *Keaton*, 124 Pac. 291, in this language:

> "In *Duff* v. *Keaton*, 33 Okl. 92, 124 Pac. 291, this court held that the only modification of the common law which authorizes the guardian to lease the land of his ward was, that such lease should be with the approval of the County Court. Under the common law rule, neither competitive bidding, nor notice, nor authority from the County Court was a requisite for a valid lease."

Further on in the opinion in the same case, the court said:

> "We conclude that the execution of an oil and gas lease is not a sale of either real estate

> or personal property, and that prior to the adoption of Rule IX, an oil and gas lease executed by a guardian, in which no element of fraud entered, and which was submitted to and approved by the County Court, was valid although it was executed without notice and without competitive bidding."

This case is still pending on rehearing in the Supreme Court and, of course, therefore, cannot be cited as an authority by that court until the rehearing has been disposed of, but it is interesting to note the wide variance in the language in this opinion, from that used by the court in the instant case and in the cases of *Winona Oil Company* v. *Barnes* and *Carlile* v. *National Oil & Development Company,* which will be hereinafter referred to. Also, it is interesting to observe that the court in this opinion expressly adheres to the rule of *Duff* v. *Keaton* and *Allen* v. *Midway Oil & Gas Company.*

It is, therefore, the contention of plaintiff in error that the leases acquired by it were valid under the statutes of Oklahoma as construed by the highest court of the state at the time plaintiff in error acquired its rights.

In its decision in the instant case, the State Supreme Court recognizes that guardians may lease the lands of their wards for oil and gas mining purposes, provided they are made "in the manner prescribed by law and under the rules of this court which have been held to have the force and effect of

a statute where the same is not in conflict with a statute," and cites its decisions in the cases of *Winona Oil Co.* v. *Barnes*, 200 Pac. 981, and *Carlile* v. *National Oil & Development Co.*, 201 Pac. 377 (Tr., p. 146).

In the two decisions cited, which were rendered in 1921, the court had held for the first time, and in conflict with its prior decisions, that in order for the guardian of a minor to make a valid lease on the ward's land, such leases must be put up and sold at public auction to the highest bidder.

The reasoning of the court in the instant case, on this point, is not very clear, but we submit that the invalidity of the compromise agreement, and the consequent invalidity of the lease therein adopted, can be based on no other rule than that laid down in the *Winona* and *Carlile* cases, *supra*. It is stated in the opinion that the minority of Indian allottees in the Five Civilized Tribes is in the nature of a restriction under the Acts of Congress, and that such restricted allottees cannot convey their allotted lands except in the manner provided by law, but the fact that the lands involved were allotted to a citizen of an Indian tribe, has no bearing whatever on the case. The record shows that Robert Marshall was a minor freedman allottee of the Creek Nation, and all restrictions on his allotment were removed by Act of Congress, May 27, 1908, section 1 (35 Stat. L. 312). The same act provides, in sec-

tion 6, that such minor allottees are subject to the jurisdiction of the probate courts of Oklahoma.

So that, in determining whether or not the lease, as adopted by the guardian with approval of the probate court, was valid or invalid, the only question involved was the proper construction of the state statutes regulating the procedure in such cases in the probate courts.

Necessarily, therefore, by basing its decision on the *Winona* and *Carlile* cases, the Supreme Court followed the rule announced in those cases, rather than the rule which applied under the decisions of the court as they stood at the time the transaction was had. In both the *Winona* and *Carlile* cases the lands involved were the allotments of minor Indian citizens of the Five Civilized Tribes, whose only restructions were those of minority, and the decisions recognize that such allotments may be leased for oil and gas mining purposes through the state probate courts, but the decisions lay down a different rule governing the procedure in the probate courts in making such leases than that which had theretofore been upheld by the Supreme Court. It will be borne in mind, that the rules of procedure in the probate courts promulgated by the Supreme Court and referred to in the *Winona* and *Carlile* cases, had not been passed at the time of the transaction here in controversy. Those rules were passed June 11, 1914.

So that while, as stated, the reasoning of the state court on this point is not very clear, its effect as changing the rule of construction of the applicable state statutes cannot be disputed. In reviewing the decision of a state court on writ of error, this court is not concerned with the reasoning in the decision, but with its effect.

> "* * * it has been repeatedly held by this court that in reviewing the judgments of the courts of a state we are not limited to a mere consideration of the language used in the opinion, but may examine and determine what is the real substance and effect of the decision."
>
> —*McCullough* v. *Commonwealth*, 43 L. ed. 382, page 387.

It is the claim, therefore, of plaintiff in error that the State Supreme Court in this case has, by its change in the rule of construction of the applicable state statutes, declared invalid the contract rights acquired by plaintiff in error, which rights were perfectly valid under the rule of construction existing at the time the contract was made.

This court has repeatedly announced the rule, that the obligation of contracts may be impaired by a change of judicial decision.

> "However we may regard the late case in Iowa as affecting the future, it can have no effect on the past. 'The sound and true rule is, that if the contract, when made, was valid by the laws of the state, as then expounded by all

departments of the government, and administered in its courts of justice, its validity and obligation canont be impaired by any subsequent action of legislation, or decision of its courts altering the construction of the law.'

"The same principle applies where there is a change of judicial decision as to the constitutional power of the legislature to enact the law. To this rule, thus enlarged, we adhere. It is the law of this court. It rests upon the plainest principles of justice. To hold otherwise would be as unjust as to hold that rights acquired under a statute may be lost by its repeal. The rule embraces this case."

—*Gelpcke* v. *Dubuque,* 17 L. ed. 520, pages 525-526.

"The true rule is to give a change of judicial construction, in respect to a statute, the same effect in its operation on contracts and existing contract rights that would be given a legislative amendment; that is to say, make it prospective, but not retroactive. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is, to all intents and purposes, the same in its effect on contracts as an amendment of the law by means of a legislative enactment. * * * If the Township Aid Act had not been repealed by the new Constitution of 1875, Art. 9, Sec. 6, which took away from all municipalities the power of subscribing to the stock of railroads, the new decisions would be binding in respect to all issues of bonds after they were

made; but we cannot give them a retroactive effect without impairing the obligation of contracts long before entered into. This we feel ourselves prohibited by the Constitution of the United States from doing."

—*Douglass* v. *Pike County*, 25 L. ed. 968, pages 971-972.

The same principle was announced in the following cases:

Anderson v. *Township*, 29 L. ed. 633;

German Savings Bank v. *County*, 32 L. ed. 519;

Los Angeles v. *Los Angeles City Water Co.*, 44 L. ed. 886, page 894.

The court has held, however, under the codes prior to the amendment of February 17, 1922, that it had no appellate jurisdiction to review this character of question on writ of error to a state court. This, as we understand it, is the rule announced in the cases cited by defendant in error, such as: *Central Land Company* v. *Laidley*, 40 L. ed 91; *Bacon* v. *State*, 41 L. ed. 132; *Rooker* v. *Fidelity Trust Company*, 43 S. C. Rep. 288.

Evidently the amendment of February 17, 1922, to section 237 of the Judicial Code, was for the express purpose of extending the appellate jurisdiction of this court to cover cases involving the impairment of contract obligations by change of judicial decision in the construction of applicable statutes. This is the plain language of the act.

It is contended in the motion to dismiss that plaintiff in error has no right to a review in this court under the Act of February 17, 1922, because the federal question, if any exists, was presented to the state court for the first time in the application for rehearing, and such application was denied without opinion.

So far as we can find, this court has not as yet construed the amendment, and we have, therefore, no precedent to guide us in the discussion of it. It will be observed, the act specified that the claim of a change in the rule of construction may be made *at any time* before final judgment *is entered*. The claim does not have to be made before judgment is *rendered*. Because of the very purpose of the act, Congress must have had in mind the distinction between the rendition of a judgment and the entry of same.

—Words & Phrases, First Series, Vol. 3, page 2403.

In the instant case, as in all others that may come within the amendment, the federal question first arose when the state court rendered its decision holding void the contract which, under prior construction, was valid. With just such a situation in view, Congress evidently intended that the claim might be made at any time before the cause had been finally disposed of and closed in the state court.

There is no statute of the state specifically providing for the entry or recording of judgments of the Supreme Court. Rule IX of the court provides that applications for rehearing, unless otherwise ordered, may be made within fifteen days from the date the opinion is filed. Rule X provides that no mandate shall issue until after the expiration of fifteen days from date of filing either the original opinion or opinion on rehearing; and that when petition for rehearing is filed within the time prescribed by Rule IX, or by leave of court, no mandate shall issue until the petition for rehearing shall have been determined.

Under the foregoing rules, a case is not finally closed until the petition for rehearing has been disposed of, or the time has expired within which petition may be filed and none has been filed.

The record shows that the petition for rehearing was filed within an extension of time granted by the Supreme Court (Tr., p. 149). That the petition was fully presented to and considered by the court, is shown by the order made, setting it for oral argument (Tr., p. 155), and by the following order:

> "And now on this day the above cause is argued orally and submitted on the record, briefs, petition for rehearing and oral argument." (Tr., p. 155.)

Among others, the petition asked for a rehearing on the following grounds:

"*8.* Because, if the court is right in holding that the validity of the leases of Tidal Oil Company depended on the validity or invalidity of the judgment of the District Court of Creek County, and if the court is right in holding that the judgment of the County Court of Creek County adopting and approving the leases under which the Tidal Oil Company has been operating the lands, then, in holding such judgments to be void for want of jurisdiction, the court has failed to consider the claim of the Tidal Oil Company, that it acquired vested rights under said leases under the prior decisions of this court, adopting a different construction of the controlling statutes, and of which rights the Tidal Oil Company cannot now be deprived without violating the obligations of its contract, and depriving it of its property without due process of law, and the court has overlooked the following controlling decisions on this subject * * *."

We respectfully submit the motion to dismiss or affirm should be denied.

PRESTON C. WEST,
ALEXANDER A. DAVIDSON,
WALLACE C. FRANKLIN,
Attorneys for Plaintiff in Error,
Tidal Oil Company.

Y. P. BROOME,
Of Counsel.

INDEX.

AUTHORITIES CITED.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. ....

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Petitioners,

vs.

J. P. FLANAGAN, *Respondent.*

MOTION.

Now come Tidal Oil Company and Eleanor Arnold, by Preston C. West, A. A. Davidson, W. C. Franklin and A. J. Biddison, their attorneys, and move this honorable court to issue a writ of *certiorari*, directed to the Supreme Court of the State of Oklahoma, to require said court to certify to this court, for its review and determination, a certain cause in said court lately pending wherein Tidal Oil Company and Eleanor Arnold were plaintiffs in error, and J. P. Flanagan was defendant in error, and they herewith tender their petition for said writ of

certiorari and a certified copy of the entire record in said cause in the Supreme Court of the State of Oklahoma.

PRESTON C. WEST,
ALEXANDER A. DAVIDSON,
WALLACE C. FRANKLIN,
ARTHUR J. BIDDISON,
Attorneys for Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. ....

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Petitioners,

vs.

J. P. FLANAGAN, *Respondent.*

PETITION FOR WRIT OF *CERTIORARI.*

To the Honorable The Supreme Court of the United States:

Your petitioners respectfully represent to this honorable court that this suit was brought by the respondent, J. P. Flanagan, against your petitioners and one other, to remove an asserted cloud on the respondent's title to the following described lands:

> The West half of the Southwest quarter of Section 29, and the East half of the Southeast quarter of Section 30, all in Township 18 North, Range 12 East, situate in Creek County, Oklahoma,

and to quiet his title to said land, and which suit was joined with an action for damages for trespass.

The lands described were allotted to Robert Marshall, an enrolled freedman of the Creek Nation. Your petitioner, Tidal Oil Company, at the time respondent acquired title, was in possession of the land, operating the same for oil and gas under oil and gas mining leases approved by the County Court of Creek County, Oklahoma, being the court having jurisdiction of the person and estate of Robert Marshall, a minor. Respondent, by his pleading, asserts title to the lands free and clear of said leases under and by virtue of a warranty deed from Robert Marshall dated January 22, 1916, the day on which he attained his majority according to the enrollment records of the Commissioner to the Five Civilized Tribes, and also a quit claim deed from Marshall dated October 13, 1916.

To the respondent's petition, your petitioners filed their respective answers, setting out fully the history of the title, to-wit:

That the allottee in 1909, representing himself to be of legal age, made a deed of his surplus lands to E. M. Arnold, W. W. Hyans and S. C. Lawson, and also contracted to convey to them the homestead portion of his allotment; that Robert Marshall brought suit in the District Court of Creek County to recover possession of the lands so conveyed on the ground that he was a minor when he executed the deed and

contract; that upon a trial of the action, the District Court found all the issues against the plaintiff and in favor of the defendants, and on May 16, 1910, rendered judgment that plaintiff take nothing by his suit, and quieting the title of the defendants to the lands involved; that thereafter the defendants in the action leased the lands for oil and gas purposes to Orient Oil & Gas Company and Arkansas Oil Company; that thereafter, on June 30, 1913, E. M. Arnold, who had in the meantime acquired the interest and title of Hyans and Lawson, entered into an agreement with James Harris, the duly appointed guardian of the allottee, Robert Marshall, and by which the said guardian agreed, subject to the approval of the County Court of Creek County, having probate jurisdiction of the person and estate of the allottee, to accept from Arnold a re-conveyance of the lands to said allottee, subject to the oil and gas leases executed to Orient Oil & Gas Company and Arkansas Oil Company, and subject to a division of the royalty prescribed in said leases, to-wit: three-fourths payable to Arnold and one-fourth thereof payable to the allottee; that said contract and agreement was submitted to the County Court and that said court approved and confirmed said agreement and ratified, approved and adopted said leases; that in pursuance of his agreement, the said E. M. Arnold, by deed dated June 30, 1913, re-conveyed the lands to Robert Marshall, reserving by said deed three-fourths of the stipulated royalty in and to said

leases, and which deed was accepted and filed for record on April 29, 1914; that after these transactions had taken place, and relying thereon, and upon the facts as disclosed by the public records, Tidal Oil Company, on July 2, 1915, purchased from Orient Oil & Gas Company, and on August 1, 1915, purchased from Arkansas Oil Company, the oil and gas leases above mentioned, and went into possession of said lands for the purpose of operating the same for oil and gas; that a few days afterwards, one Vance Likely, the then guardian of Robert Marshall, described as an incompetent, filed his petition in the County Court of Creek County informing the court that there might be some question of the authority of Arnold, Hyans and Lawson to execute the oil and gas leases so far as they affected the allottee's homestead portion of the land, and that he had entered into an agreement to adopt and ratify such leases; that in such agreement, it was recited that oil and gas had been produced from the land in paying quantities, and that the share of the royalties paid to his ward, to-wit, one-fourth, had given him a substantial income and would continue so to do, and that the assignment of such leases to Tidal Oil Company, then Okla Oil Company, which was a skillful and expert operator, would be to the interest of his ward, and praying that his action in the premises be approved, and that on August 29, 1915, the said County Court made an order approving said agreement and ratifying and confirming said leases.

By said answers it was also alleged, that J. P. Flanagan, after taking his deed from the allottee on January 22, 1916, accepted from Tidal Oil Company for a period of seven months, and with full knowledge of the facts, the one-fourth of the royalty prescribed in said leases, and retained the same, and that he was thereby estopped from asserting the invalidity of said leases.

By her separate answer, Eleanor Arnold alleged that Robert Marshall at the time of the execution of his deed to J. P. Flanagan, on January 22, 1916, was under guardianship as an incompetent.

The reply of the respondent, J. P. Flanagan, to the answers of your petitioners, was a general denial.

The evidence disclosed that at the time of Flanagan's purchase of the lands from Robert Marshall on January 22, 1916, there were twenty-four oil wells thereon, being operated by Tidal Oil Company, and that after that date, and prior to the institution of the suit against it, it completed four additional wells; that during a period of seven months subsequent to January 22, 1916, Tidal Oil Company paid the royalties prescribed in said leases, paying one-fourth thereof to the respondent, J. P. Flanagan, which he accepted and retained, and the remaining three-fourths to your petitioner Eleanor Arnold, as the assignee of E. M. Arnold, and which division of royalties was in accordance with the agreement between

the said E. M. Arnold and the guardian of Robert Marshall, which was duly approved by the County Court of Creek County.

The trial court rendered judgment for Flanagan, decreeing him possession of the lands and the lease equipment thereon, and quieting the title thereto, and also rendered judgment against your petitioner, Tidal Oil Company, for $108,140.90, for oil and gas taken from the land, and against your petitioner, Eleanor Arnold, for $10,135.20, being the value of three-fourths of the royalty interest paid to her under the agreement above mentioned, approved by the County Court, and with the knowledge of the respondent, Flanagan.

The Supreme Court of the state, upon appeal, affirmed the decree and judgment of the trial court, modifying it only to the extent of allowing Tidal Oil Company its expenses of operation, which the trial court had disallowed.

The Supreme Court held and decided:

First: That Arnold, Hyans and Lawson acquired no rights in the land by virtue of the judgment of the District Court of Creek County rendered May 16, 1910, holding that under its decision in the case of *Bell* v. *Fitzpatrick,* decided on February 29, 1916, the said District Court, under the statutes of the United States, had no jurisdiction to decide the issues against the plaintiff, Robert Marshall, and by which said decision in *Bell* v. *Fitzpat-*

rick, prior decisions of the court deciding that such a judgment was valid until set aside, reversed or modified, were expressly overruled.

Second: That the acts of the County Court of Creek County in approving and confirming the transaction by E. M. Arnold and the guardian of Robert Marshall, and in adopting and approving the oil and gas leases to Orient Oil & Gas Company and Arkansas Oil Company, were in violation of Acts of Congress imposing restrictions on alienation, and beyond the jurisdiction and power of said County Court under the laws of the State of Oklahoma, in that said laws do not permit the sale of a lease of an infant's lands except at public auction, as decided by said Supreme Court in *Winona Oil Company* v. *Barnes,* decided May 10, 1921.

Third: That J. P. Flanagan was not estopped to assert the invalidity of the leases under which the lands had been developed and made valuable for oil and gas, for the reason that such leases, having been held to be originally void, under the Acts of Congress as well as the statutes of the state, were incapable of recognition or adoption by Flanagan.

Fourth: The court also found, but without further evidence than the allegation in the answer of Eleanor Arnold, that Robert Marshall had been adjudged an incompetent, and was under guardianship as such incompetent when he made his deed of January 22, 1916, and that therefore such deed was void, although the respondent, Flanagan, pleaded such

deed as the source of his title, and held that Flanagan's acts and conduct in accepting royalties under the leases, between the date of such deed and the date of his quit claim deed of October 13, 1916, were not the acts of an owner of the land, and therefore could not estop him to assert title, free of the leases, under his second deed.

It was the contention of your petitioners:

First: That Tidal Oil Company acquired a vested right of property under its leases and the purchase thereof from Orient Oil & Gas Company and Arkansas Oil Company; that Arnold, Hyans and Lawson, adjudged by the state District Court to be the owners of the land, and from which judgment no appeal was taken, had the legal right, as against the claims of Flanagan, to execute such leases; that the said District Court admittedly had jurisdiction of the parties and the subject-matter, and that its judgment, upon a hearing and on the issues joined, was conclusive on the parties thereto, and that the effect of the court's decision herein, is the promulgation and enforcement of a doctrine unknown to our system of jurisprudence, and in conflict with established rules and principles, to-wit: that a court may have jurisdiction, in an adversary action, to decide for the plaintiff, but is without jurisdiction to decide for the defendant, and therefore the decision amounts to a taking of the property of your petitioners without due process of law.

Second: That even if the judgment of the District Court of Creek County of May 16, 1910, was ineffective for any purpose, the approval and confirmation by the County Court of Creek County of the leases to Orient Oil & Gas Company and Arkansas Oil Company, upon reconveyance of the land by Arnold to the allottee, was a valid exercise of jurisdiction, and was effective to vest title to said leases in said lessees, and that Flanagan's purchase of the fee in the land was subject to the rights of your petitioners under said leases, and especially to the rights of Tidal Oil Company thereunder and its purchase from said lessees in reliance upon their approval by a court of competent jurisdiction.

Third: That even if the judgment of the District Court of Creek County, rendered May 16, 1910, and by which the title of your petitioners' lessors was adjudicated, was invalid for the reasons stated by the court, the Tidal Oil Company acquired by its contract of purchase of said leases, vested rights under prior decisions of the said Supreme Court, announcing a contrary rule of law applicable to such judgments, to-wit: that such judgments were valid until set aside, reversed or modified on appeal or otherwise, and on which rule it relied in purchasing its leases, and which rule of law remained as the rule of such court until changed by the decision of said court in the said case of *Bell* v. *Fitzpatrick*, decided February 29, 1916, and after your petitioner, Tidal Oil Company, had acquired rights of property under

its said leases purchased by it prior to said date, and that by such change in the rule of law your petitioners were deprived of their rights guaranteed under the fourteenth amendment to the constitution.

Fourth: That even if the said judgments of the County Court of Creek County, approving and adopting and confirming the oil and gas leases on said land, were void under the law as announced by the Supreme Court in *Winona* v. *Barnes*, Tidal Oil Company acquired vested rights of property by virtue of its purchase of said leases prior to the date of said decision, and under a different construction of the applicable statutes announced in prior decisions of said Supreme Court, and by which prior decisions it was held that approval of a private sale of the lease on an infant's land was a valid exercise of jurisdiction by the County Courts of the State of Oklahoma; that the change in the construction of said statutes by said decision in *Winona* v. *Barnes*, is, in its application to the rights of Tidal Oil Company thereunder, under its contract of purchase of said leases prior to such change, repugnant to the Constitution of the United States, in that it operates to divest it of its rights and to impair the obligation of its contracts, created and acquired under a different construction of the applicable statutes.

Fifth: That, in any case, the respondent, J. P. Flanagan, being an adult white person, could not be heard to question the validity of the leases, as, by his acceptance of the one-fourth royalty in-

terest prescribed therein, he recognized and adopted such leases as his own act, regardless of the question of whether they were originally valid or void, or whether the judgments of the District Court and the County Court of Creek County were valid or void for want of jurisdiction; that if the said leases were made in violation of a positive statute of the United States as held by said Supreme Court, they were nevertheless capable of conferring rights and of recognition, and Flanagan was without right to invoke the protection of a federal law not enacted or intended for his benefit.

Sixth: That even if the deed of January 22, 1916, was void for the reasons stated by the court, Flanagan having pleaded said deed as the source of his title, and having accepted royalties under the lease as the owner of the fee by virtue of such deed, and his ownership under said deed not having been controverted at the trial, he is estopped to deny its validity.

Seventh: That if the said deed of January 22, 1916, was void, because, as the court finds the grantor therein was then a duly adjudged incompetent, there was no proof in the record that he was restored to competency as provided by the statutes of Oklahoma, prior to the execution of the quit-claim deed of October 13, 1916, and the said deed is also void for the same reason, and therefore the respondent, Flanagan, had no title whatever to the land, and the Supreme Court rendered judgment for the respondent

without evidence, and whereby your petitioners have been deprived of their property without due process of law.

Eighth: That the respondent, Flanagan, paid Robert Marshall, an ignorant negro boy, $1500.00 for property worth many thousands of dollars, and is not only guilty of defrauding the grantor, but is also guilty of unfair dealing with Tidal Oil Company, in respect to the transaction as the record discloses, but the Supreme Court, in effect, holds that notwithstanding the respondent was not free from fraud, your petitioners were also guilty of moral wrongdoing, and that it would therefore affirm the decree of the trial court, not upon equitable principles, but upon the strict legal rights of the parties, although, according to its holding and decision in the case as to the deed of January 22, 1916, the respondent, Flanagan, is without any legal right in the premises.

A transcript of the record in said cause, in said Supreme Court is attached hereto and made a part hereof.

Your petitioners respectfully pray that a writ of *certiorari* may issue out of and under the seal of this court, directed to the Supreme Court of Oklahoma, commanding said court to certify and send to this court, on a day to be designated in said writ, a full and complete transcript of the record and proceedings of the said Supreme Court in the suit entitled *Tidal Oil Company and Eleanor Arnold, plain-*

tiffs in error, v. *J. P. Flanagan, defendant in error.* No. 11209 on the docket of said court, to the end that said case may be reviewed and determined by this court as provided by law, and further pray that the said decision and judgment of said Supreme Court of Oklahoma be reversed and set aside by this honorable court, and that judgment and decree be rendered dismissing the said suit of J. P. Flanagan for want of equity, and your petitioners further pray for such other and further relief and remedy as this court shall deem proper.

Respectfully submitted,

Tidal Oil Company and
Eleanor Arnold,
Petitioners,

By PRESTON C. WEST,
ALEXANDER A. DAVIDSON,
WALLACE C. FRANKLIN,
ARTHUR J. BIDDISON,
Solicitors and Counselors for Petitioners.

AFFIDAVIT.

State of Oklahoma, County of Tulsa—ss.

A. A. Davidson, being duly sworn, says that he is one of counsel for the petitioners herein; that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

ALEXANDER A. DAVIDSON.

Subscribed and sworn to before me this 31" day of January, 1923.

Anne Golladay Bell,

(Seal) Notary Public.

My Commission expires November 25, 1925.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. ....

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Petitioners,

vs.

J. P. FLANAGAN, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF *CERTIORARI.*

I.

If the Orient Oil & Gas Company and Arkansas Oil Company, in taking a lease of the land, from Arnold, Hyans and Lawson, had the right to rely on the title of the lessors as judicially determined by the state District Court, then, of course, the respondent could not successfully assail the validity of such leases. The Supreme Court of Oklahoma decided that such judicial determination of title was a nullity for want of jurisdiction in the court to so determine. The record shows that in the action brought by Marshall against Arnold, Hyans and Lawson, issues were

duly made up by the pleadings of the respective parties and a trial in due course on these issues was had, and which resulted in the judgment for the defendant, which judgment remained in full force and effect until arbitrarily set aside in this case without any attack having been made upon it in the pleadings. It is conceded that the District Court had jurisdiction of the parties and also of the subject-matter of the suit. It is not denied that it had jurisdiction to decide for the plaintiff, so that the rights of the lessees and their assignees, under the leases executed by the prevailing parties in the action, are stricken down by the announcement of a doctrine which has no place in our system of jurisprudence, namely, that a court may have jurisdiction to decide a cause, but no judicial power to determine it, except in one way. This is the effect of the application to the instant case of the court's decision in *Bell* v. *Fitzpatrick,* 157 Pac. 334. Of course, jurisdiction involves the power to decide wrongly as well as rightly. The Supreme Court of Kansas, relative to a similar attempt to introduce such a doctrine into the jurisprudence of the country, said in *Clevenger* v. *Figley,* 75 Pac. 1001:

> "Was the decision for the plaintiff without jurisdiction and void, while a decision for the defendants would have been with jurisdiction and valid? Such a conclusion would be utterly illogical under any rational theory of jurisdiction, and all attempts to justify it would necessarily confuse and befog the law. It could not

be drawn except through an undiscriminative and misconceived use of the modern doctrine that jurisdiction is limited to power to render the particular judgment in the particular case. Such a misinterpretation of that doctrine was censured by this court in the case of *Watkins Land Mortg. Co.* v. *Mullen*, 62 Kan. 1, 5, 61 Pac. 385, 386, 84 Am. St. Rep. 372, in the following language: 'In the opinion of the court of appeals a quotation is made from one of the notes in 12 A. & E. Encycl. of La. (1st ed.) 247, as follows: "There is a tendency in the later decisions in the United States to hold that jurisdiction is not only the power to hear and determine, but also the power to enter the particular judgment in the particular case." If by this is meant that when a court invested with general jurisdiction over a particular subject-matter, wrongly applies the law to a proved or admitted state of facts its judgment is outside its jurisdiction and subject to collateral review, we unhesitatingly say that no such tendency is to be observed in the later decisions, because such a tendency, instead of modifying the general rule or introducing an exception to it, would go to its absolute subversion'."

The court says in its opinion that the error of the judgment is apparent on the face of the record. The record showed that the plaintiff, Marshall, was suing to recover his lands because he was a minor when his deeds were made. That presented a question of fact. The answer of Arnold set up that Marshall had made the deed under a decree of the District Court conferring rights of majority. That presented a question of law, which no court had then de-

termined. The District Court certainly had jurisdiction to decide both questions. If it had determined that Marshall was a minor and that the decree conferring majority rights was void, and had given judgment for *him*, the judgment unquestionably would have bound Arnold. But a judgment in favor of Arnold was the exercise of exactly the same judicial power. How, then, could it be void for want of such power?

The decision of the Supreme Court on this point was based upon the application to the situation of section 6 of the Act of Congress of May 27, 1908, c. 199, 35 Stat. 312, which provides that the person and property of minor allottees of the Five Civilized Tribes shall be subject to the jurisdiction of the probate courts of the state, and it is asserted that the effect of the judgment of the District Court of Creek County was to divest Robert Marshall of the title to his allotted lands without due process of law, relying upon the court's decision in *Bell* v. *Fitzpatrick*, *supra*, and the decision of this court in *Truskett* v. *Closser*, 235 U. S. 233. The latter case dealt only with the power of the District Courts of the state to confer rights of majority under the state statutes, upon a minor allottee of the Five Civilized Tribes, and held they had no such power. *Bell* v. *Fitzpatrick*, also dealt with that question and further decided that such minor was without power to confess, or authorize the District Court to enter, a judgment in favor of her grantee, in a deed of her allotment

made pursuant to a decree of the District Court conferring majority rights. But the District Court of Creek County, in rendering the judgment of May 16, 1910, did not pretend to divest a title or confer a power or right of disposition, but judically determined a controversy between the parties before it, and about a subject-matter over which it had admitted jurisdiction. To deny the power of the court to render judgment in that case except for a particular party and in a particular way, is, in effect, to deny its jurisdiction altogether. Prior to the decision of *Bell* v. *Fitzpatrick*, effect had been given to similar judgments of the state courts. *Markham* v. *Dugger*, 34 Okla. 492, 126 Pac. 190; *Wiley* v. *Edmonson*, 43 Okla. 1, 133 Pac. 38. These cases were overruled by *Bell* v. *Fitzpatrick*.

II.

If the probate court of Creek County had jurisdiction to approve the compromise and settlement made between Arnold, the record owner and possessor of the land, and the guardian of the allottee Robert Marshall, and thereby adopt and approve the leases executed by Arnold, with the same effect as if the guardian had, with the court's authority, executed such leases in the regular way after the reconveyance of the land to his ward, then the respondent had no cause of action against your petitioners herein.

The statutes of Oklahoma contain no limitation upon the power of a guardian to compromise.

Section 6543, Revised Laws of 1910, provides:

"Every guardian must settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the county judge, compound for the same and give discharges to the debtors on receiving a fair and just dividend of his estate and effects; and he must appear for and represent his ward in all legal suits and proceedings, unless another person is appointed for that purpose as guardian or next friend."

Section 6569, Revised Laws of 1910, provides:

"The County Court, on the application of a guardian or any person interested in the estate of any ward, after such notice to persons interested therein as the judge shall direct, may authorize and require the guardian to invest the proceeds of sales, and any other of his ward's money in his hands, in real estate, or in any other manner most to the interest of all concerned therein; and the County Court may make such other orders and give such directions as are needful for the management, investment and disposition of the estate and effects, as circumstances require."

In *Manion* v. *Ohio Va. Ry. Co.,* (Ky.) 36 S. W. 530, it was held that a guardian has authority, unless limited by statute, to compromise a claim on behalf of his ward.

In Iowa it is provided by statute that:

"* * * Guardians of the property of minors must prosecute and defend for their wards. They must also, in other respects, manage their in-

terests under the direction of the court. They may thus lease their lands or loan their money during their minority, and may do all other acts which the courts may deem for the benefit of their wards."

Concerning this statute, the Supreme Court of Iowa, in *Hagy* v. *Avery*, 29 N. W. 409, said:

"This confers upon the guardian ample power to compromise a pending suit if the court sanctions and authorizes such a course. The only limit to the guardian's authority is that, before the compromise can be legally made, authority from the court must be obtained. This is not an adversary proceeding of the guardian against the ward, but in seeking to obtain the requisite authority from the court, the guardian is subserving the interest of his ward. The petition to obtain such authority is filed in the ward's interest. Notice to him is not required, and it is not certain that the guardian, in the absence of fraud, would not have the power to compromise a pending action without obtaining authority from the court. The burden, however, in such case, would be on the guardian or other party to show that the compromise was in all respects fair, and for the best interest of the ward. However this may be, as the compromise was made in this case with the approval and under the authority of the court, it, in the absence of all evidence tending to show fraud or undue advantage, is legal, and binding on the defendant; and it is immaterial whether he was notified of the application made to the court in his behalf and in his interest or not. The fact that a judgment had been entered in said action is immaterial. The guardian had the power, under the direction

> of the court, to settle the pending litigation, whether a legal and binding judgment had or had not been entered."

In *Ordinary, etc.,* v. *Dean,* 44 N. J. L. 65, it was held that a guardian may compound or release a debt due his ward's estate, the court saying:

> "* * * He stands in the same position as any other trustee who may, generally, acting in good faith, compound or release a debt due the trust estate. Such composition or release, for a valuable consideration, is *prima facie* valid and effectual, and if the ward, after becoming of age, seeks to impeach it, the burden is upon him to show that it was not made in good faith but in fraud of his rights. *Torry* v. *Black,* 58 N. Y. 185; *Blue* v. *Marshall,* 3 P. Wms. 381; *Weed* v. *Ellis,* 3 Caines 253; *Weston* v. *Stewart,* 11 Me. 326; *Hutchins* v. *Johnson,* 12 Conn. 376; Perry on Trusts, par. 482; Schouler on Dom. Rel. 463. It is right, as the infant cannot act for himself, that someone should be authorized in his behalf to compound and settle with his debtor a claim made on account of his estate."

On the same principle guardians have been held to have authority to agree to an arbitration of the claims of his ward against a third person. *Hutchins* v. *Johnson,* (Conn.) 30 Am. Dec. 622; *Kelly* v. *Adams,* 22 N. E. 317, in which last case it was said:

> "There has been some controversy as to whether an agreement to submit to arbitration when a suit is pending had the effect to discontinue the action; but the weight of authority and of reason seem to be that it does not. *Nettleton*

v. *Gridley,* 21 Conn. 531; *Lary* v. *Goodnow,* 48 N. H. 170; *Paulison* v. *Halsey,* 38 N. J. L. 488. There is no doubt, we think, but what at common law a guardian could agree to an arbitration. *Hutchins* v. *Johnson,* 12 Conn. 376; *Strong* v. *Beronjon,* 18 Ala. 168; *Weston* v. *Stuart,* 11 Me. 326; *Smith* v. *Kirkpatrick,* 58 Ind. 254; Morse, Arb. 25; Caldw., Arb. 24; *Hutchins* v. *Johnson,* 30 Am. Dec. 622, and note."

In *Hayes* v. *Mass. Mutual Life Ins. Co.,* 1 L. R. A. 303, it was said:

"In defining the powers of guardians over the personal estate of their wards, the statute provides that 'the guardian shall settle all accounts of his ward, and demand and sue for and receive in his own name as guardian all personal property of and demands due the ward, or, with the approbation of the court, compound for the same and give a discharge to the debtor upon receiving a fair and just dividend of his estate and effects.' 1 Starr & C., p. 1241, Sec. 17. In an early case it was held by this court that the statute respecting guardians and wards was not designed to, and did not, constitute a complete code, and that the purpose of the legislature was to confer upon the probate court power to appoint guardians, and to regulate their conduct according to the common law. *Bond* v. *Lockwood,* 33 Ill. 212. And while at common law a guardian may only have been required to manage and care for the estate of his ward honestly and with reasonable prudence and diligence, and might have compromised or submitted to arbitration claims and demands due the ward's estates, it is manifest that when the legislature, in the section referred to, under-

took to define the powers and duties of guardians, and expressly provided that, as to demands due the ward, the guardian might, 'with the approbation of the court, compound for the same and give a discharge to the debtor,' a change and modification of the common law was intended. If before this statute the guardian might, in the exercise of his own honest discretion, compound and release a demand due his ward, after the passage of this statute he was clearly required to procure the approbation of the proper court before exercising such power. For the personal discretion of the guardian there was substituted the judicial determination of an established court; and this statutory requirement is something more than a mere regulation and direction, and was intended by the legislature as an additional safeguard and protection to the ward, by requiring the terms and conditions of any proposed compromise to be submitted, to be inquired into and passed upon by the court having special jurisdiction of the estate of minors."

The effect of the compromise in the instant case was the restoration of the lands to the allottee Marshall, subject to an oil and gas lease under which he received one-fourth of the usual and customary one-eighth royalty.

Marshall on his discharge from guardianship, never repudiated the transaction nor the action of the court in approving it, but apparently ratified the same, as the respondent, Flanagan, admits that by the deed to him of January 22, 1916, he acquired a

right to only one-fourth of the prescribed royalties in the leases, and the deed purports to convey all of Marshall's interest in the lands.

The Supreme Court, however, held that the County Court was without jurisdiction in the premises:

(a) Because under the state statutes, it is held, a probate court has no power to authorize a lease of a minor's lands except at public sale, pursuant to notice, following, on this point, its decision in *Winona Oil Company* v. *Barnes*, 200 Pac. 981, 985, decided May 10, 1921, although the court had, in prior decisions, held and construed the statutes to the contrary. *Spade* v. *Morton*, 38 Okla. 334; *Cowles* v. *Lee*, 138 Pac. 688; *Cabin Valley Mining Company* v. *Hall*, 155 Pac. 170; *Eaves* v. *Mullen*, 197 Pac. 433; *Duff* v. *Keaton*, 124 Pac. 291; and upon which decisions, and the construction of the state statutes therein announced, your petitioners had the right to rely in the purchase of said leases pursuant to the orders and judgment of the County Court. These decisions so construed the state statutes as to authorize a County Court to direct a private sale of an infant's land, or a lease thereof, without the necessity of submitting the same to competitive bidding at public sale or auction, and that such was the law prevailing at the date of the orders and judgment of the County Court of Creek County approving said leases, and at the time of the contract of purchase by Tidal Oil Company of said leases.

(b) Because the leases were incapable of approval, ratification or adoption by the County Court, as such court, it is held, had no power to approve the agreement between Arnold and the guardian of Robert Marshall, because such agreement involved the conveyance of an interest in restricted allotted lands in violation of the Acts of Congress. The conveyance involved was a re-conveyance of the fee to the allottee, and not a conveyance from him. The making, and approval by a probate court, of a lease of restricted Indian land is not a conveyance in violation of the restrictions imposed by Congress but is the exercise of the very power conferred by Congress on such courts, by the Act of May 27, 1908. Had the County Court, after Arnold re-conveyed the fee to Marshall, authorized the guardian to formally execute new leases to the same lessees, it could not be said that such leases violated the restrictions provided by the Act of Congress. The adoption and approval of leases already executed cannot have a different effect. Flanagan has no right to complain of such irregularity. If the agreement to give Arnold three-fourths of the royalties prescribed in the leases amounted to a fraud on the allottee, such an issue was not involved in the suit, and Flanagan could not raise that issue because he then had no interest in the lands. *Brock* v. *Rogers,* 69 N. E. 334; *Whitney* v. *Kelly,* 29 Pac. 624.

III.

Tidal Oil Company's rights under the leases, are fixed by the rules of law announced by the Supreme Court, and in effect at the time it purchased them from the original lessees, and under such rules of law:

(a) The judgment of the District Court of Creek County in the action brought by Robert Marshall against Arnold, Hyans and Lawson, was a valid judgment as between the parties to the action, until reversed, modified or set aside in a direct proceeding for that purpose. *Markham* v. *Dugger, supra; Wiley* v. *Edmonson, supra.* Under such a judgment, Arnold, Hyans and Lawson had the legal right to execute such leases, so far as the parties to this suit are concerned. These cases decided that a judgment by a court having jurisdiction of the subject-matter and of the parties, is a bar to any future action by the same parties, so long as it remains unreversed and not in any wise vacate or annulled. The cases involved judgments rendered against restricted Indians relative to their allotments upon pleadings and issues made after all the parties had been brought in by due process. The subsequent overruling of these cases in *Bell* v. *Fitzpatrick*, did not, and could not, operate to destroy leases based, and rights acquired in reliance, upon such decisions. *Gelpcke* v. *Dubuque*, 1 Wall. 175; *Muhlker* v. *Harlem Rd. Co.*, 197 U. S. 544; *Louisiana* v. *Pilsbury*, 105 U. S. 278; *Hollins-*

head v. *Von Glahn*, 4 Minn. 131; *Pittsburgh Iron Co.*, v. *Lake Superior Iron Co.*, 76 N. W. 402.

(b) The orders and judgment of the County Court of Creek County in approving the leases were valid, and made in the exercise of a jurisdiction recognized by the court in its prior decisions, to-wit: *Spade* v. *Morton, supra; Cowles* v. *Lee, supra; Cabin Valley Mining Company* v. *Hall, supra; Eaves* v. *Mullen, supra; Duff* v. *Keaton, supra.* Under the ruling announced in these decisions, a right of property vested in Tidal Oil Company by its contract of purchase of such leases, and the construction of the applicable statutes in the cases last cited, became a part of its contract of purchase as the settled construction of such statutes. A change in the construction of the statutes after rights had been acquired on the faith of these statutes, is the same as an amendment of the statutes by legislative enactment. *Douglass* v. *County of Pike*, 101 U. S. 677; *Anderson* v. *Santa Anna T. P.*, 161 U. S. 361; *Insurance Co.* v. *Debolt*, 16 Howard 415; *Gelpcke* v. *City of Dubuque*, 1 Wall. 175; *Havemeyer* v. *Iowa Co.*, 3 Wall. 294; *Olcott* v. *Supervisors*, 16 Wall. 678; *Taylor* v. *City of Ypsilanti*, 105 U. S. 72; *Town of Hardingsburg* v. *Cravens*, 47 N. E. 153.

IV.

The leases were not executed in violation of a positive law of the United States as we have pointed out, but even if this were true, the respondent Flan-

agan by his continued acceptance of a one-fourth of the royalties prescribed in the leases for a period of seven months, and with full knowledge of all the facts, is estopped to deny the validity of the agreement approved by the County Court of Creek County under which the division of the royalties was made, and to question the validity of such leases, and must be held to have adopted them as his own act regardless of whether the transactions mentioned were originally valid or not. *Lasoya Oil Company* v. *Zulkey*, (Okla.) 140 Pac. 160; *Scott* v. *Signal Oil Company*, 35 Okla. 173; *Capps* v. *Hensley*, 23 Okla. 311; *Penn* v. *Halsey*, 19 Ill. 295; *Deford, et al.*, v. *Mercer, et al.*, 24 Iowa, 118; *Dismukes* v. *Halpern*, 1 S. W. 554; *Alexander* v. *Fishing Co.*, 14 S. W. 80; *Rothschild* v. *Title Guaranty & Trust Co.*, 41 L. R. A. (N. S.) 740. The mere fact, if true, that such leases were in violation of a statute of the United States would not operate to prevent the application of the doctrine of estoppel or waiver, because the leases, not being inherently vicious or immoral, are capable of conferring rights and of recognition by one under no disability to do so. *Hartman* v. *Butterworth Lumber Co.*, 199 U. S. 335.

V.

The respondent Flanagan was estopped to deny the validity of his deed of January 22, 1916, even if it was void as the court held. His estoppel in equity does not depend upon the question whether he had a good title under that deed; it is sufficient that he

claimed to own the land and exercised ownership thereof. *Scott* v. *Signal Oil Company, supra; Oldenburg* v. *Baird,* 58 N. E. 1073; *Wells* v. *Dillard,* 20 S. E. 263; *Kinsworthy* v. *Mitchell,* 21 Ark. 147.

VI.

If the deed of January 22, 1916, was void, because, as the court held, the grantor therein had been adjudged incompetent, there is no evidence whatever in the record that his competency was restored. Sections 1449 and 1452 of the 1910 Revised Laws of Oklahoma provide:

> "When it is represented to the County Court upon verified petition of any relative or friend, that any person is insane, or from any cause mentally incompetent to manage his property, the judge must cause notice to be given to the supposed insane or incompetent person, of the time and place of hearing the case, not less than five days before the time so appointed, and such person, if able to attend, must be produced before him on the hearing." (Section 1449.)
>
> "Any person who has been declared insane, or the guardian or any relative of such person, within the third degree, or any friend, may apply by petition to the County Court of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is then sane. Upon receiving the petition, the judge must appoint a day for the hearing, and cause notice of the trial to be given to the guardian of the petitioner, if there be a guardian, and to his or her husband

> or wife, if there be one, and to his or her father or mother, if living in the county. On the trial, the guardian or relative of the petitioner, and in the discretion of the judge, any other person, may contest the right of the petitioner to the relief demanded. Witnesses may be required to appear and testify, as in other cases, and may be called and examined by the judge on his own motion. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease." (Section 1452.)

It is clear, therefore, that in the absence of any evidence that Marshall's competency was restored as provided by section 1452, *supra*, and the burden of which was on the respondent Flanagan, the second deed has the same infirmity as the first, and Flanagan had no title whatever. It is assumed, however, without evidence, that he took title under his second deed of October 13, 1916, and was awarded the property upon that assumption. Such a decision does not constitute due process of law.

VII.

The value of the property purchased by respondent from the allottee Marshall, and at the time of such purchase, could not be less than the amount of the judgment rendered in his favor, to-wit, $118,000,00, and was, of course, much more than that, because the oil and gas deposits had not been exhaust-

ed and were still being extracted at the time of the judgment. He paid his grantor for the property only $1500.00, and was awarded the fruits of this inequitable transaction, amounting to a fraud, considering the age, race and condition of the allottee, and in defiance of the maxim: *"Ex dolo malo non oritur actio."* But Flanagan was not only guilty of defrauding his grantor, but of unfair dealing with the Tidal Oil Company, as the record shows. Before he took his first deed, he made inquiry of the officers of that company concerning the propriety of his purchase and got their advice upon the matter. He purchased the lands upon the information gotten from them. He did not then object to the company's title to its leases, although he knew all the facts concerning it—they were of record—but on the contrary, he impliedly admitted its rights in the premises. In February, after he had taken his deed, he advised them that there was some doubt about his title, although there is no evidence that he told them the nature of the defect, and suggested that they assist him in securing a better title. They refused, and in the course of the conversation, Flanagan intimated that the company's title might also be subject to doubt, to which they replied that he might as well be the one to attack it as somebody else. This conversation, as we have stated, took place in February, 1916. Evidently, and prior to March, 1916, he had either perfected his title satisfactorily to himself, or had decided that his title under the deed of January 22nd was good, and apparently also abandoned the idea,

if he ever entertained it, of attacking the validity of the company's rights, for he requested payment of the royalties therein prescribed, giving the company a bond to indemnify it, and the company thereupon began the payment of royalties in March, 1916, and continued such payments twice a month for seven months thereafter, and also proceeded with the development of the land in accordance with its duty under the leases, drilling during this period, four additional wells at a cost of $18,000.00, and which sum, under the judgment of the court, it was not permitted to recover. No notice of any change in Flanagan's position was ever given to Tidal Oil Company, until he turned up with a quit-claim deed to the land in October, 1916. If, during the period from March to October, he was negotiating for a new deed with the intention, when he could be properly fortified, of assailing the company's rights, which he was thus every day recognizing and affirming, and upon grounds, the existence of which he knew all the time, it is hardly necessary to say that his conduct is unfair and does not entitle him to a standing in a court of equity.

Respectfully submitted,

PRESTON C. WEST,
ALEXANDER A. DAVIDSON,
WALLACE C. FRANKLIN,
ARTHUR J. BIDDISON,
Solicitors and Counselors for Petitioners.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. ....

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Petitioners,

vs.

J. P. FLANAGAN, *Respondent.*

NOTICE *of* MOTION.

To Edward H. Chandler and Summers Hardy, Attorneys for Respondent:

Please take notice that on Monday, February 19, 1923, at the opening of court on that day, or as soon thereafter as counsel can be heard, a motion for writ of *certiorari*, of which a copy is annexed hereto, will be submitted to the Supreme Court of the United States, at the City of Washington, District of Columbia, for the decision of the court thereon, and that at the same time, a petition for said writ, and brief in support thereof, copies of

which are hereto attached, will also be presented to said court.

Respectfully,

PRESTON C. WEST,
ALEXANDER A. DAVIDSON,
WALLACE C. FRANKLIN,
ARTHUR J. BIDDISON,
Attorneys for Petitioners.

We hereby acknowledge service of the foregoing notice, together with copies of the motion, petition for writ of *certiorari* and brief referred to in said notice, this 5th day of February, 1923.

EDWARD H. CHANDLER,
SUMMERS HARDY,
Attorneys for Respondent.

No. 784/79

In the

Supreme Court of the United States.

October Term, 1922.

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Petitioners,
VERSUS
J. P. FLANAGAN, *Respondent.*

BRIEF OF RESPONDENT.

EDWARD H. CHANDLER,
SUMMERS HARDY,
Attorneys for Respondent.

WILLIAM O. BEALL,
THOMAS J. HANLON,
Of Counsel.

Authorities Cited.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. .....

TIDAL OIL COMPANY AND ELEANOR ARNOLD,
Petitioners,
vs.
J. P. FLANAGAN, *Respondent.*

BRIEF *of* RESPONDENT.

The petition for a writ of *certiorari* herein is apparently founded upon the last clause of section 237 of the Judicial Code, as amended by Act of Congress of December 23, 1914, chapter 2, and the Act of Congress of September 6, 1916, chapter 448, section 2, by the provisions of which where any title, right, privilege or immunity is claimed under the Constitution or a statute of the United States, and the decision is either in favor of or against such right, title, privilege or immunity especially set up or claimed under such constitution or statute, it is

competent by *certiorari* for this court to require there be certified to it for review and determination any such cause, where any final judgment or decree has been rendered or passed by the highest court of the state in which such decision could be had, as there is no contention made either in the petition for *certiorari*, or in the brief in support thereof, that the *validity* of any statute or any authority exercised under the United States was drawn in question; nor the *validity* of any statute or authority exercised under any state within the principles laid down by this court with reference to the construction of the word "authority" in *Telluride Power Co.* v. *Rio Grande R. Co.*, 175 U. S. 639, 44 L. ed. 305.

This is also made more apparent by virtue of the decision of this court in *Philadelphia & R. Coal Co.* v. *Gilbert*, 245 U. S. 162, 62 L. ed. 221, wherein it was held that a decision of the highest court of a state passing upon the jurisdiction of a trial court of such state was not reviewable in the Supreme Court of the United States by writ of error, as there was not drawn in question "an authority exercised under the state" for the reason that the power to hear and decide cases in the state courts is not the kind of "authority" to which the statute governing such appeals refers, and that therefore *certiorari* under the last clause of section 237 of the Judicial Code was the only remedy of a party desiring a review of such decision in the Supreme Court of the United States.

The issues made by the pleadings and as passed upon by the Supreme Court of Oklahoma briefly stated, were as follows:

First. The plaintiff pleaded an action to quiet title under the law and practice in the courts of Oklahoma.

Second. The defendants below (petitioners herein) pleaded the defense of *res adjudicata,* setting up the prior judgment of the District Court of Creek County, Oklahoma, and two orders of the County Court of Creek County, Oklahoma (being the court having probate jurisdiction in Oklahoma), approving and confirming contracts of ratification made by the respective guardians of the minor allottee, Robert Marshall, and also estoppel by virtue of the alleged receipt of one-fourth of the royalty during the year 1916 by the plaintiff below (respondent herein). The petitioner, Tidal Oil Company (one of the defendants below), only claimed an interest in said land by virtue of being the assignee of the alleged oil and gas mining leases, acquiring its interest by assignments in July and August, 1915, and five (5) years after the judgment of said District Court, and two (2) years after the order of the County Court approving the contract of the first guardian; the second order of the County Court approving the contract of the second guardian having been made upon application of and after Tidal Oil Company had purchased said leases from the alleged lessees.

No statute of the United States and no constitutional provision thereof was pleaded by any party in the trial court, or in the motion for new trial filed by defendants in said court (petitioners herein), but assignment Number VI filed in the Supreme Court of Oklahoma alleges:

> "VI. The judgment and decree of the court, by divesting the Tidal Oil Company of its rights and title acquired under the judgment of the District Court of Creek County, and the judgment and order of the County Court of Creek County, each having jurisdiction in the premises, amount to, and the enforcement thereof constitutes, a taking of property without due process of law, and in violation of the Constitution of the United States and of the State of Oklahoma."

It therefore appears to us that the main question for decision by the Supreme Court of Oklahoma was whether or not the judgment of the District Court of Creek County, Oklahoma, pleaded by the defendants below (petitioners herein) constituted a valid defense of *res adjudicata* between the parties hereto, all of whom are grantees or assignees of the parties to said judgment in said court.

The other question submitted to the Supreme Court of Oklahoma under the above mentioned assignment of error was whether or not Tidal Oil Company acquired such a vested right or title by virtue of the judgment of said District Court of Creek County, Oklahoma, and the orders of confirmation

and ratification by the County Court of Creek County, that the decision of the Supreme Court of Oklahoma in this case and in the other cases cited in its opinion changed a "rule of property" in said state so as to deprive said Tidal Oil Company (one of the petitioners herein) of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

This court held in *Phoenix Fire Insurance Co.* v. *Tennessee,* 161 U. S. 174, 40 L. ed. 670:

> "The decision of the Supreme Court of a state as to the weight to be given to the judgment of a court of that state is not reviewable in this court because it is not a federal question."

Likewise, in *Smalley* v. *Laugenor,* 196 U. S. 93, 49 L. ed. 401.

With reference to the "rule of property" doctrine, this court said, in *Gannon* v. *Johnston,* 243 U. S. 108, 61 L. ed. 622, as follows:

> "A contention that many investments have been made upon a construction of law differing from that given in this case by the Supreme Court of Oklahoma and that such construction and common understanding of the bar have operated to establish a rule of property which cannot be changed, was d e n i e d by the Supreme Court of Oklahoma and rightly so. The matters relied on were inadequate to overcome the meaning of the statutory provisions in question."

We are unable to see where there is any such rule of property involved in this case as a basis for

the claim that the rights of the petitioners were taken away in violation of the United States Constitution for the following reasons:

First. The determination of the jurisdiction of the District Court of Creek County, Oklahoma, is not overturning a rule of property because the decision of that court was merely that of a trial court and not of the highest court of the state adjudging the law of the state with reference to rights of property.

Second. The decisions relied upon by the petitioners, to-wit, *Markham* v. *Dugger*, 34 Okla. 492, 126 Pac. 190, and *Wiley* v. *Edmonson*, 43 Okla. 1, 133 Pac. 38, were not decisions establishing rules of property by the Supreme Court of Oklahoma, but merely deciding the effect of prior judgments between the parties to cases in which such judgments were rendered —merely determining whether or not the plea of *res adjudicata* was a good plea between the parties in the subsequent suits between the same parties.

Third. The case of *Bell* v. *Fitzpatrick*, 53 Okla. 574, 157 Pac. 334, did not announce a rule of property overruling *Markham* v. *Dugger* and *Wiley* v. *Edmonson, supra*, but merely reiterated the principle announced by the Supreme Court of Oklahoma in *Jefferson* v. *Winkler* (July 12, 1910), 26 Okla. 653, 110 Pac. 755, which was decided several years prior to the time Tidal Oil Company acquired any interest as lessee in the real property in controversy herein. In the case of *Jefferson* v. *Winkler*, the Supreme Court of Oklahoma said:

"That the allotted lands of freedmen and mixed-blood Indians having less than half Indian blood, under the age of 18, if a female, and under the age of 21, if a male, may be sold under the supervision and jurisdiction of the probate courts of the state, and not otherwise."

With reference to the fourth contention of the petitioners set forth in their petition for *certiorari* herein, concerning the case of *Winona* v. *Barnes*, 83 Okla. 248, 200 Pac. 981, that the application of the principles decided by the Supreme Court of Oklahoma in that case deprives Tidal Oil Company of its vested rights and impairs the obligations of its contract, we think the statement of the Supreme Court of Oklahoma in the case at bar is sufficient answer, wherein it said:

"Our attention has not been directed to any statute authorizing the making of such compromise agreements as the record discloses were entered into in the instant case * * * Parties in dealing with restricted Indians with respect to restricted allotted lands will not be permitted to secure conveyances in violation of applicable statutes prescribing the manner in which said land may be alienated and then institute litigation and make compromise agreements with reference to such fraudulent and void transactions in furtherance of a scheme to acquire title to such lands in a manner not authorized by law. Such course of conduct, if sanctioned by the courts, would permit parties with impunity to defeat the very purpose of legislation enacted by Congress for the protection of such Indian allotments."

Stated in concise form the contentions of petitioners which attempt to present a federal question may be reduced to two propositions:

1. That the validity of the deed and leases under which petitioners claim had been adjudged valid in prior litigation between Marshall, the allottee, and Arnold and associates, grantees in Marshall's conveyance and lessors in the oil and gas leases under which petitioners claim, and by the orders of the County Court of Creek County approving said leases.

2. That by former decisions of the Supreme Court of Oklahoma judgments of the District Courts of Oklahoma rendered in actions involving possession of allotted lands of members of Indian Tribes were held to be a valid exercise of jurisdiction by such court, and that the rule announced by the Supreme Court of Oklahoma in *Bell* v. *Fitzpatrick,* 53 Okla. 574, 157 Pac. 334, and in this case, constituted a change in rule of decision by said court and deprived petitioners of their property without due process of law and impaired the obligations of their oil and gas mining lease.

In *Markham* v. *Dugger,* 34 Okla. 492, 126 Pac. 190, and in *Wiley* v. *Edmonson,* 43 Okla. 1, 133 Pac. 38, the Supreme Court of Oklahoma held that a judgment in an ejectment action involving the land of members of the Indian Tribes were valid judgments and were a bar to a subsequent action between the same parties for the same subject-matter. These are the decisions of the Supreme Court of Oklahoma

which, in effect, it is contended had established a rule of property upon which petitioners relied, and which rule of property and rule of decision was subsequently changed in *Bell* v. *Fitzpatrick, supra,* and in this case. The decisions in *Markham* v. *Dugger,* and in *Wiley* v. *Edmonson, supra,* were confined solely to the question of whether the former judgment could be urged as a bar in a subsequent action and did not undertake to adjudge the validity of the muniments of title relied upon by either party to the litigation in those actions.

The right of a state to determine the extent and limits of the jurisdiction of its own courts and the character of the controversies which shall be heard therein, the mode and time of invoking that jurisdiction and the rules of practice to be observed in its exercise, is a matter of local law.

—*Chambers* v. *B. & O. Ry. Co.*, 207 U. S. 142, 52 L. ed. 143;
John v. *Paulin*, 231 U. S. 583, 58 L. ed. 381;
St. L. I. M. & S. Ry. Co. v. *Taylor*, 210 U. S. 281, 52 L. ed. 1060.

Decisions determining the effect of a judgment of a state court as *res adjudicata* between the parties is a very different proposition from a rule of decision determining the manner in which title to property may pass from one person to another, or affirming the validity of a conveyance of property made under certain circumstances.

Decisions of the highest court of a state which amount to rules of property that will be recognized by this court, whether founded on statutes or not, are decisions which announce rules governing the descent, transfer or sale of property and the rules which affect the title and possession thereto.

—*Bucher* v. *Cheshire R. Co.*, 8 Sup. Ct. 974, 125 U. S. 555, 31 L. ed. 795;

Randolph v. *Quidnick Co.*, 10 Sup. Ct. 655, 135 U. S. 457, 34 L. ed. 200;

DeVaughn v. *Hutchinson*, 17 Sup. Ct. 461, 165 U. S. 566, 41 L. ed. 827.

The seventh contention that the judgment of the Supreme Court of Oklahoma was not supported by the evidence is answered by the opinion of that court in the case, wherein it is stated that petitioners admitted in the state court that Marshall, the allottee, had been restored to competency prior to the execution of the quit claim deed of October 13, 1916. There is, therefore, no merit in this contention.

The Supreme Court of Oklahoma has never by any decision, so far as we know, announced the rule that a conveyance by deed or alienation of an interest by an oil and gas lease of the lands of a restricted Indian minor made in violation of the various Acts of Congress, as were the deed and leases in question in this case, is valid, but on the contrary has uniformly held that such attempts to alienate or incumber the lands of a minor citizen of either of the Five Civilized Tribes were absolutely void.

An examination of the decision of the Supreme Court of Oklahoma in this suit will disclose that all questions, with one possible exception, passed upon and decided by said court, were non-federal, and governed by the laws and public policies of the State of Oklahoma, as follows:

First. The court passed upon the right of the plaintiff below (respondent herein) to maintain such action under the laws of Oklahoma.

Second. The effect to be given to the quitclaim deed executed by the allottee on October 13, 1916, to the plaintiff, under and by virtue of the laws of Oklahoma.

Third. The jurisdiction of the District Court of Creek County, Oklahoma.

Fourth. The jurisdiction of the County Court of Creek County, Oklahoma, exercising probate jurisdiction, to enter an order concerning an oil and gas lease executed in violation of and contrary to the laws of Oklahoma.

Fifth. The rule governing a plea or defense of estoppel in the courts of Oklahoma by virtue of the laws of that state and decisions of the Supreme Court of Oklahoma governing that subject.

We respectfully submit that the only question involving federal laws and the federal constitution passed upon and decided by that court was the contention made and which is answered by the court as follows:

"It is insisted that in *Markham* v. *Dugger,* 34 Okla. 492, 126 Pac. 190, the court held that such a judgment as was rendered by the District Court of Creek County in the action between Marshall and Arnold and others is valid, and the Tidal Oil Company, having acquired its leases subsequent to this decision, had a right to rely upon the rule as announced in the case; that a rule of property was established by the decision. We have examined the case of *Markham* v. *Dugger,* and we do not believe it sustains the contention made by counsel for the plaintiffs in error. Commissioner AMES, speaking for the court in *Markham* v. *Dugger, supra,* said: 'There is no dispute about the court having had jurisdiction of the persons of both parties. There is no dispute about the court having had jurisdiction of the subject-matter.'

* * * * * * *

"It is clear no question of jurisdiction was raised in the case. This court is committed to the rule that no rule of property may exist to render valid conveyances made in violation of a statute or of a governmental policy. *Gannon* v. *Johnston, et al.,* 40 Okla. 695, 140 Pac. 430, Ann. Cas. 1915D, 522; *Id.,* 243 U. S. 108, 37 Sup. Ct. 330, 71 L. ed. 625."

Petitioners have heretofore been allowed a writ of error to this court in this case which, if sustained by this court as properly taken by virtue of the Act of Congress of February 17th, 1922, amending section 237 of the Judicial Code, will bring before this court for decision the "rule of property" contention made by petitioners in their petition for writ of *cer-*

tiorari and their brief in support thereof. If this court holds that this case is such an action upon contract that the decision is reviewable by this court upon writ of error under said Act of February 17, 1922, there will be no occasion for the allowance of the writ of *certiorari* herein.

Respondents, therefore, respectfully urge that the petition and transcript of record attached thereto, show no grounds for the issuance of a writ of *certiorari* therein.

Respectfully submitted,

EDWARD H. CHANDLER,
SUMMERS HARDY,
Attorneys for Respondent.

WILLIAM O. BEALL,
THOMAS J. HANLON,
Of Counsel.

We hereby acknowledge service of a copy of the foregoing brief of respondent, this the 12th day of February, 1923.

PRESTON C. WEST,
ALEXANDER A. DAVIDSON,
WALLACE C. FRANKLIN,
ARTHUR J. BIDDISON,
Attorneys for Petitioners.

TIDAL OIL COMPANY ET AL. *v.* FLANAGAN.

ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 179. Motion to dismiss or affirm submitted November 19, 1923.—Decided January 7, 1924.

1. An Act of February 17, 1922, amending Jud. Code, § 237, provides: "In any suit involving the validity of a contract wherein it is claimed that a change in the rule of law or construction of statutes by the highest court of a State applicable to such contract would be repugnant to the Constitution of the United States, the Supreme Court shall, upon writ of error, reexamine, reverse, or affirm the final judgment of the highest court of a State in which a decision in the suit could be had, if said claim is made in said court at any time before said final judgment is entered and if the decision is against the claim so made."
Construed, as not seeking to add to the general appellate jurisdiction of this Court, existing under prior legislation, but to permit review by writ of error of the class of cases therein mentioned, in which the defeated party claims that his constitutional rights have been violated by the judgment of the state court itself; and to permit the objection to be raised, in the state court, after the handing down of its opinion, and to be raised here even though petition for rehearing be denied by the state court without opinion. Pp. 450, 454.
2. The mere fact that a state Supreme Court decides against a party's claim of property or contract right by reversing its earlier decision of the law applicable to such cases, does not deprive him of his property without due process of law, contrary to the Fourteenth Amendment, nor amount to the passing of "any law" impairing the obligation of contracts, contrary to the contract clause of the Constitution. Pp. 450, 451.
3. This has been so often adjudged by the Court, that contentions to the contrary are without substance and a writ of error dependent on them must be dismissed for lack of jurisdiction. Pp. 450, 455.
4. Cases *distinguished* in which it has been held, that federal courts, exercising jurisdiction based on diverse citizenship, to avoid injustice, but without invoking the contract clause, may decide and enforce the state law as laid down by decisions of the state court governing when a contract was made, rather than by its later decisions; and those involving alleged impairment of contract by a

subsequent statute, in which the construction of the statute by the state court is accepted, but the existence, validity and scope of the contract, (and, therein, the meaning of the state statutes forming part of it,) and the effect upon the contract of the subsequent statute, are determined by this Court for itself. P. 451.

Writ of error to review 87 Okla. 231, dismissed.

ERROR to a judgment of the Supreme Court of Oklahoma, which affirmed with modification a judgment in favor of the present defendant in error, in his action involving the rights of the parties under conflicting deeds and agreements affecting an Indian allotment.

Mr. Edward H. Chandler and *Mr. William O. Beall*, for defendant in error, in support of the motion. *Mr. Summers Hardy* and *Mr. Thomas J. Hanlon* were also on the brief.

Mr. Preston C. West, Mr. Alexander A. Davidson, Mr. Wallace C. Franklin and *Mr. Arthur J. Biddison*, for plaintiffs in error, in opposition to the motion. *Mr. Y. P. Broome* was also on the brief.

Insofar as Tidal Oil Company is concerned, it is conceded that the writ of error may only be sustained under the Act of February 17, 1922, 42 Stat. 366, amending § 237, Jud. Code.

The record presents this situation: The parties on both sides claim through Marshall, a minor, to whom the land was allotted. On June 30, 1913, the allottee, by his guardian, entered into an agreement with one Arnold, in settlement and compromise of certain controversies existing between them relative to the ownership of the allotment. On petition filed by the guardian in the probate court of his appointment, that court approved and confirmed the agreement. The Oil Company claims as assignee of the lease, recognized and adopted by the guardian on behalf of the allottee with the approval of the proper probate court.

Under the statutes of Oklahoma, as construed by its highest court at the time the lease was so adopted and approved, the only requisite to the validity of this lease was, that it be sanctioned or approved by the probate court having jurisdiction of the guardianship. *Duff* v. *Keaton*, 33 Okla. 92; *Allen* v. *Midway Oil Co.*, 33 Okla. 91; *Cowles* v. *Lee*, 35 Okla. 159. See also *Papoose Oil Co.* v. *Swindler*, March 27, 1923, pending on rehearing and unreported.

In its decision in the present case, the state Supreme Court recognizes that guardians may lease lands of their wards for oil and gas mining purposes, provided they are made "in the manner prescribed by law and under the rules of this court which have been held to have the force and effect of a statute where the same are not in conflict with a statute," and cites its decisions in *Winona Oil Co.* v. *Barnes*, 83 Okla. 248, and *Carlile* v. *National Oil Co.*, 83 Okla. 217. In these decisions, rendered in 1921, the court had held, for the first time, and in conflict with its prior decisions, that in order for the guardian of a minor to make a valid lease on the ward's land, such leases must be put up and sold at public auction to the highest bidder.

The record shows that Marshall was a freedman allottee of the Creek Nation, and all restrictions on his allotment were removed by Act of May 27, 1908, § 1, 35 Stat. 312. The same act provides, in § 6, that such minor allottees are subject to the jurisdiction of the probate courts of Oklahoma.

So that, in determining whether or not the lease, as adopted by the guardian with approval of the probate court, was valid or invalid, the only question involved was the proper construction of the state statutes regulating the procedure in such cases in the probate courts. Necessarily, therefore, by basing its decision on the *Winona* and *Carlile Cases*, the court below followed the rule announced in those cases, rather than the rule which applied under

its decisions as they stood at the time the transaction was had. While the reasoning of the court on this point is not very clear, its effect as changing the rule of construction of the applicable state statutes cannot be disputed. This Court is not concerned with the reasoning, but with its effect. *McCullough* v. *Virginia*, 172 U. S. 102. This Court has repeatedly held that the obligation of contracts may be impaired by a change of judicial decision. *Gelpcke* v. *Dubuque*, 1 Wall. 175; *Douglass* v. *Pike County*, 101 U. S. 677; *Anderson* v. *Santa Anna*, 116 U. S. 356; *German Savings Bank* v. *Franklin County*, 128 U. S. 526; *Los Angeles* v. *Los Angeles Water Co.*, 177 U. S. 558.

The Court has held, however, under the codes prior to the amendment of February 17, 1922, that it had no appellate jurisdiction to review this character of question on writ of error to a state court. This, as we understand it, is the rule announced in the cases cited by defendant in error, such as: *Central Land Co.* v. *Laidley*, 159 U. S. 103; *Bacon* v. *Texas*, 163 U. S. 207; and *Rooker* v. *Fidelity Trust Co.*, 261 U. S. 114. Evidently the amendment of February 17, 1922, was for the express purpose of extending the appellate jurisdiction of this Court to cover cases involving the impairment of contract obligations by change of judicial decision in the construction of applicable statutes. This is the plain language of the act.

It is contended, in the motion to dismiss, that plaintiff in error has no right to a review under this act because the federal question, if any exists, was presented to the state court for the first time in the application for rehearing, and the application was denied without opinion. It will be observed the act specifies that the claim of a change in the rule of construction may be made at any time before final judgment is *entered*. The claim does not have to be made before judgment is *rendered*. Because of the very purpose of the act, Congress must have had in mind the distinction between the rendition of a

judgment and its entry. In the present case, as in all others that may come within the amendment, the federal question first arose when the state court rendered its decision holding void the contract which, under prior construction, was valid. With just such a situation in view, Congress evidently intended that the claim might be made at any time before the cause had been finally disposed of and closed in the state court.

There is no statute of the State specifically providing for the entry or recording of judgments of the Supreme Court. Under its rules, a case is not finally closed until the petition for rehearing has been disposed of, or the time has expired within which petition may be filed and none has been filed. The record shows that the petition for rehearing was filed within an extension of time granted by the Supreme Court, and that it was set down for oral argument, argued and submitted.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

J. P. Flanagan sued the Tidal Oil Company and Eleanor Arnold in the District Court of Creek County, Oklahoma, to quiet his title to two tracts of land therein of eighty acres each. His title was based on a quitclaim deed of Robert Marshall, an allottee and citizen of the Creek Nation, executed in October, 1916, after Marshall had attained his majority and had been discharged from guardianship. The defendants derived their title from the same allottee, but the deed under which they claimed was made by Marshall when he was 14 years old and married, and after he had been granted majority rights by the District Court. He subsequently sought to have this deed cancelled in a suit in the same court brought by his guardian, but judgment went against him. Defendants insisted that this judgment was conclusive in the case at bar against the plaintiff as subsequent

grantee of Marshall. After this judgment, and by way of compromise, gas and oil leases and contracts to convey were made in favor of defendants or their grantors by the guardian and approved by the County Court, and these were also relied on to defeat plaintiff's title. The District Court gave judgment in favor of Flanagan for the lands and included a heavy recovery for mesne profits. The Supreme Court of Oklahoma affirmed this but somewhat reduced the amount of recovery. It held that the deed and agreements and leases under which defendants claimed were void because Marshall was a minor when they were made; that the judgment of the District Court against him and his guardian in their suit to cancel the first deed was void because it appeared on the face of the record that Marshall was then a minor and that these were allotted lands, of the title to which he could not be divested except in a Probate Court under procedure required by a state statute and not complied with. The errors here assigned are, first, that the judgment deprived the defendants of their property without due process of law contrary to the Fourteenth Amendment; and, second, that the Supreme Court of the State, in holding the judgment and confirmations of the District and County Courts to be void, reversed its previous decisions and changed a rule of property of the State upon the faith of which the deed, leases and other contracts set up by defendants were made, and thus impaired their obligation in violation of § 10, Article I, of the Federal Constitution.

A motion to dismiss is made by the defendant in error, because the federal questions were too late, in that they were raised for the first time in petitions for rehearing which the court denied without opinion. The record does not sustain this ground in respect to the objection based on the Fourteenth Amendment, because that appears in the assignment of errors filed on the appeal from

the District Court to the State Supreme Court. The assignment, however, has no substance in it. The parties to this action have been fully heard in the state court in the regular course of judicial proceedings and in such a case the mere fact that the state court reversed a former decision to the prejudice of one party does not take away his property without due process of law. This was expressly held in the case of *Central Land Co.* v. *Laidley*, 159 U. S. 103, 112. See also *Morley* v. *Lake Shore Ry. Co.*, 146 U. S. 162, 171; *Patterson* v. *Colorado*, 205 U. S. 454, 461; *Delmar Jockey Club* v. *Missouri*, 210 U. S. 324, 335; *Bonner* v. *Gorman*, 213 U. S. 86, 91; *Milwaukee Electric Ry. Co.* v. *Milwaukee*, 252 U. S. 100, 106.

A ground for dismissal urged is that the validity of no federal or state statute or authority exercised under the United States or the State, was drawn in question in the state court on the ground of a repugnance to the Federal Constitution, and hence there is no right to a writ of error under § 237 of the Judicial Code, as amended by the Act of September 6, 1916, c. 448, 39 Stat. 726, and that the only remedy available to the plaintiffs in error was an application to this Court for certiorari because they had been denied a right, title, privilege, or immunity, granted by the Federal Constitution. In answer, the plaintiffs in error invite attention to an Act of Congress of February 17, 1922, c. 54, 42 Stat. 366, again amending § 237, reading as follows:

" In any suit involving the validity of a contract wherein it is claimed that a change in the rule of law or construction of statutes by the highest court of a State applicable to such contract would be repugnant to the Constitution of the United States, the Supreme Court shall, upon writ of error, reexamine, reverse, or affirm the final judgment of the highest court of a State in which a decision in the suit could be had, if said claim is made in said

court at any time before said final judgment is entered and if the decision is against the claim so made."

The case before us seems clearly within the foregoing. It does involve the validity of a contract, it is claimed that a change in the rule of law by the highest court of the State applicable to the contract is repugnant to the Federal Constitution, and the decision of that court was against the claim.

It has been settled by a long line of decisions,[1] that the provision of § 10, Article I, of the Federal Constitution, protecting the obligation of contracts against state action, is directed only against impairment by legislation and not by judgments of courts. The language—"No State shall . . . *pass any* . . . *law* impairing the obligation of contracts"—plainly requires such a conclusion. However, the fact that it has been necessary for this Court to decide the question so many times is evidence of persistent error in regard to it. Among the cases relied on to sustain the error, are *Gelpcke* v. *Dubuque*, 1 Wall. 175; *Butz* v. *Muscatine*, 8 Wall. 575; *Douglass* v. *Pike County*, 101 U. S. 677; *Anderson* v. *Santa Anna*, 116 U. S. 356; *German Savings Bank* v. *Franklin County*, 128 U. S. 526; *Rowan* v. *Runnels*, 5 How. 134, 139, and *Los Angeles* v.

[1] *Commercial Bank* v. *Buckingham's Executors*, 5 How. 317, 343; *Railroad Co.* v. *Rock*, 4 Wall. 177, 181; *Railroad Co.* v. *McClure*, 10 Wall. 511; *Knox* v. *Exchange Bank*, 12 Wall. 379, 383; *Lehigh Water Co.* v. *Easton*, 121 U. S. 388; *New Orleans Waterworks Co.* v. *Louisiana Sugar Refining Co.*, 125 U. S. 18, 30; *Brown* v. *Smart*, 145 U. S. 454, 458; *Central Land Co.* v. *Laidley*, 159 U. S. 103, 111, 112; *Bacon* v. *Texas*, 163 U. S. 207, 221, 223; *Hanford* v. *Davies*, 163 U. S. 273, 278; *Turner* v. *Wilkes County Commrs.*, 173 U. S. 461, 463; *National Association* v. *Brahan*, 193 U. S. 635, 647; *Hubert* v. *New Orleans*, 215 U. S. 170, 175; *Fisher* v. *New Orleans*, 218 U. S. 438; *Cross Lake Shooting and Fishing Club* v. *Louisiana*, 224 U. S. 632, 638; *Ross* v. *Oregon*, 227 U. S. 150, 161; *Kryger* v. *Wilson*, 242 U. S. 171, 177; *Rooker* v. *Fidelity Trust Co.*, 261 U. S. 114, 118; *Columbia Ry. Co.* v. *South Carolina*, 261 U. S. 236, 244.

Los Angeles City Water Co., 177 U. S. 558. These cases were not writs of error to the Supreme Court of a State. They were appeals or writs of error to federal courts where recovery was sought upon municipal or county bonds or some other form of contracts, the validity of which had been sustained by decisions of the Supreme Court of a State prior to their execution, and had been denied by the same court after their issue or making. In such cases the federal courts exercising jurisdiction between citizens of different States held themselves free to decide what the state law was, and to enforce it as laid down by the State Supreme Court before the contracts were made rather than in later decisions. They did not base this conclusion on Article I, § 10, of the Federal Constitution, but on the state law as they determined it, which, in diverse citizenship cases, under the third Article of the Federal Constitution they were empowered to do. *Burgess* v. *Seligman*, 107 U. S. 20. In such cases, as a general rule, they, in the interest of comity and uniformity, followed the decisions of state courts as to the state law, but where gross injustice would be otherwise done, they followed the earlier rather than the later decisions as to what it was. Had such cases been decided by the state courts, however, and had it been attempted to bring them here by writ of error to the State Supreme Court, they would have presented no federal question, and this Court must have dismissed the writs for lack both of power and jurisdiction. This is well illustrated by the cases of *Gelpcke* v. *Dubuque*, 1 Wall. 175, and *Railroad Co.* v. *McClure*, 10 Wall. 511. In the former, bonds sued on in the Circuit Court of the United States, were collected under judgment of this Court. In the latter, like bonds sued on in a state court were held invalid, and a writ of error to the State Supreme Court was dismissed.

Other cases cited are *Louisiana* v. *Pilsbury*, 105 U. S. 278, and *Muhlker* v. *New York & Harlem R. R. Co.*, 197

U. S. 544, but in each of them a statute had been passed subsequently to the contract involved and was held to impair it. In such a case this Court accepts the meaning put upon the impairing statute by the state court as authoritative, but it is the statute as enforced by the State through its courts which impairs the contract, not the judgment of the court.

There is another class of cases relied on to maintain this writ of error. They are those in which this Court has held that in determining whether a state law has impaired a contract, it must decide for itself whether there was a contract and whether the law as enforced by the state court impairs it. It often happens that a law of the State constitutes part of the contract and, to make the constitutional inhibition effective, this Court must exercise an independent judgment in deciding as to the validity and construction of the law and the existence and terms of the contract. *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436, 443; *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116, 145; *Wright* v. *Nagle*, 101 U. S. 791, 793; and *McGahey* v. *Virginia*, 135 U. S. 662, 667.

Then there are cases like *McCullough* v. *Virginia*, 172 U. S. 102; *Houston & Texas Central R. R. Co.* v. *Texas*, 177 U. S. 66, 76, 77; *Hubert* v. *New Orleans*, 215 U. S. 170, 175; *Carondelet Canal Co.* v. *Louisiana*, 233 U. S. 362, 376, and *Louisiana Ry. & Nav. Co.* v. *New Orleans*, 235 U. S. 164, 171. In each of them the judgment of the State Supreme Court seemed from its opinion merely to be a reversal of a previous construction by it of a statute upon the faith of which the contract had been made. In fact, however, the judgment merely gave effect to an existing subsequent statute impairing the obligation of the contract which was thus a law passed in violation of Article I, § 10.

The difference between all these classes of cases and the present one wherein it is claimed that a state court judg-

ment alone, and without any law, impairs the obligation of a contract, has been carefully pointed out in *Central Land Co.* v. *Laidley*, 159 U. S. 103, 111, 112, in *Bacon* v. *Texas*, 163 U. S. 207, 221, 223, and in *Ross* v. *Oregon*, 227 U. S. 150, 161. Certain unguarded language in *Gelpcke* v. *Dubuque*, 1 Wall. 175, 206; *Butz* v. *Muscatine*, 8 Wall. 575, 583, and in *Douglass* v. *Pike County*, 101 U. S. 677, 686–687, and in some other cases, has caused confusion, although those cases did not really involve the contract impairment clause of the Constitution.

We come then to the last point made on behalf of plaintiffs in error. It may be best stated in the words of their brief. After referring to *Gelpcke* v. *Dubuque*, *supra*, *Douglass* v. *Pike County*, *supra*, *Anderson* v. *Santa Anna*, *supra*, and *German Savings Bank* v. *Franklin County*, *supra*, counsel say:

"The court has held, however, under the codes prior to the amendment of February 17, 1922, that it had no appellate jurisdiction to review this character of question on writ of error to a state court. This, as we understand it, is the rule announced in the cases cited by defendant in error, such as: *Central Land Co.* v. *Laidley*, 159 U. S. 103, *Bacon* v. *Texas*, 163 U. S. 207, and *Rooker* v. *Fidelity Trust Co.*, 261 U. S. 114.

"Evidently the amendment of February 17, 1922, to section 237 of the Judicial Code, was for the express purpose of extending the appellate jurisdiction of this court to cover cases involving the impairment of contract obligations by change of judicial decision in the construction of applicable statutes. This is the plain language of the act."

The intention of Congress was not, we think, to add to the general appellate jurisdiction of this Court existing under prior legislation, but rather to permit a review on writ of error in a particular class of cases in which the defeated party claims that his federal constitutional rights

have been violated by the judgment of the state court itself, and further to permit the raising of the objection after the handing down of the opinion. This Court has always held it a prerequisite to the consideration here of a federal question in a case coming from a state court that the question should have been raised in that court before decision, or that it should have been actually entertained and considered upon petition to rehear. A mere denial of the petition by the state court without opinion, is not enough. *Godchaux Co.* v. *Estopinal*, 251 U. S. 179, 181; *Bilby* v. *Stewart*, 246 U. S. 255; *Missouri Pacific Ry. Co.* v. *Taber*, 244 U. S. 200; *St. Louis & San Francisco R. R. Co.* v. *Shepherd*, 240 U. S. 240, 241; *Consolidated Turnpike Co.* v. *Norfolk, etc. Ry. Co.*, 228 U. S. 326, 334; *Forbes* v. *State Council of Virginia*, 216 U. S. 396, 399; *McCorquodale* v. *Texas*, 211 U. S. 432, 437; *Mutual Life Ins. Co.* v. *McGrew*, 188 U. S. 291, 308; *Mallett* v. *North Carolina*, 181 U. S. 589, 592; *Pim* v. *St. Louis*, 165 U. S. 273.

It was the purpose of the Act of 1922 to change the rule established by this formidable array of authorities as to the class of cases therein described. The question in such cases could not well be raised until the handing down of the opinion indicating that the objectionable judgment was to follow. This act was intended to secure to the defeated party the right to raise the question here if the state court denied the petition for rehearing without opinion.

We can not assume that Congress attempted to give to this Court appellate jurisdiction beyond the judicial power accorded to the United States by the Constitution. The mere reversal by a state court of its previous decision, as in this case before us, whatever its effect upon contracts, does not, as we have seen, violate any clause of the Federal Constitution. Plaintiff's claim, therefore, does not raise a substantial federal question. This has been

decided in so many cases that it becomes our duty to dismiss the writ of error for want of jurisdiction.

Writ of Error Dismissed.